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Volume 2
Pages 203 - 389

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATIONS

No. C-2011000036

In the Matter of:
Local Government Center, Inc., et al.

BEFORE DONALD E. MITCHELL, ESQUIRE
PRESIDING OFFICER

* * * * *

REPORT OF PROCEEDINGS

May 1, 2012

9:46 a.m.

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New Hampshire State Archives and Genealogical
Public Research Room
71 South Fruit Street
Concord, New Hampshire 03301

Court Reporter: Pamela J. Carle, LCR, RPR, CRR

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1 THE PRESIDING OFFICER: Good morning,
2 ladies and gentlemen. We begin again with this
3 proceeding, and we are at that phase in the
4 hearing where the Bureau of Securities Regulations
5 as the moving party are putting their direct case
6 in. Now Attorney Volinsky is making inquiry of
7 his proffered expert witness, Mr. Coutu.

8 Mr. Volinsky, would you please pick up
9 with your inquiry?

10 MR. VOLINSKY: Yes. Thank you.

11 DIRECT EXAMINATION, Continued

12 BY MR. VOLINSKY:

13 Q. Let's start with some quick
14 housekeeping pieces, Mr. Coutu. First of all,
15 yesterday there was some objections and there was
16 an assertion that you had not read board minutes
17 of the local government center, and that was your
18 testimony in deposition. Do you recall that?

19 A. Yes, I do.

20 Q. It's true, is it not, that you actually
21 quoted some board minutes in your report?

22 A. I did.

23 Q. Let me ask you, in your deposition were

1 you asked -- this is page 242, question at line
2 11 -- did you think the minutes of LGC were,
3 quote, salient, documents? I did review some key
4 and critical minutes. Which ones? And then you
5 went on to explain what you reviewed.

6 A. Correct.

7 Q. And is this, in fact, accurate?

8 A. It is. I might note, however, that I
9 believe I said I wasn't clear on the year -- let me
10 see. I think the cite of the year is wrong, I
11 think it was 2002, but.

12 Q. Okay. Thank you. You have in front of
13 you our Exhibit Book 1. And just very quickly to
14 get them into evidence, let me ask you to look at
15 Exhibits 1, 2 and 3. BSR 1, 2 and 3. And you'll
16 see that each of those exhibits is a chart, and
17 behind the chart are a set of numbers.

18 And I'll represent to you that the
19 charts were made from the numbers that are on the
20 second page of each exhibit by Mr. Larochelle.
21 The numbers, do they appear to accurately reflect
22 the sense of the finances of each of the risk
23 pools during the times in question?

1 A. They do.

2 MR. VOLINSKY: I move to strike the IDs
3 on 1, 2 and 3 and ask their admission.

4 THE PRESIDING OFFICER: Can you tell me
5 who compiled the numbers behind the chart?

6 MR. VOLINSKY: Mr. Larochelle put
7 together the charts.

8 THE PRESIDING OFFICER: Yes.

9 MR. VOLINSKY: But the numbers are from
10 the large exhibits that are marked as 7, 8, 9, I
11 think.

12 THE PRESIDING OFFICER: Compiled by?

13 MR. VOLINSKY: Mr. Coutu.

14 THE PRESIDING OFFICER: Very good.
15 Okay, thank you. Mr. Saturley, any objection?
16 And I'll just remind that I'm cognizant of similar
17 proffers in the first day. Do you have an
18 objection to these three?

19 MR. SATURLEY: I have an objection to
20 the accuracy of the numbers.

21 THE PRESIDING OFFICER: Okay. It's my
22 understanding that representative counsel from the
23 parties present are going to be examining these in

1 more detail, and I'll accept your objection as a
2 conditional objection at this time, and as we move
3 along in these proceedings we'll try to identify
4 which numbers are in disagreement, why they are in
5 disagreement, and if they can be corrected because
6 they were, quote, innocent error in compilation.
7 Would that satisfy your objection at this time?

8 MR. SATURLEY: At this time.

9 THE PRESIDING OFFICER: Very good.

10 MR. SATURLEY: Thank you.

11 THE PRESIDING OFFICER: Thank you. And
12 they are admitted with that conditional remark, as
13 were yesterday's 5, 6 and 7 and 8. You may
14 proceed.

15 (BSR 1, 2 and 3 admitted into evidence.)

16 MR. VOLINSKY: Thank you.

17 BY MR. VOLINSKY:

18 Q. Switching topics, Mr. Coutu. Yesterday
19 we talked about cash distributions up through the
20 parent of HealthTrust. I want to very quickly
21 talk about noncash distributions in the same way.
22 So, first of all, the term noncash distribution in
23 this context means what?

1 A. Maybe if I use the example of an
2 individual who owns a home, and that individual is
3 compelled to give away his home. In the ordinary
4 case you would expect to receive compensation for
5 the contribution of the home.

6 In the situation which occurred in
7 2003, they were assets in HealthTrust and the
8 Property Liability Trust, which assets were
9 transferred from those two risk pools to the
10 holding company as part of the 2003 reorganization.

11 In total, there was \$5,301,000 in
12 transfers made, primarily representing the real
13 estate then owned by HealthTrust, 75 percent, PLT,
14 25 percent, and in concert with that transfer of
15 assets, not cash, no consideration was paid by LGC,
16 the holding company.

17 Q. And the real estate office --

18 MR. SATURLEY: I'll object at this
19 point.

20 THE PRESIDING OFFICER: Mr. Saturley.

21 MR. SATURLEY: The statement that no
22 consideration was paid has been offered presumably
23 as an expert opinion of some type, and Mr. Coutu

1 has not been qualified with regards to the
2 consideration that might have been available or
3 might have been tendered.

4 Indeed, at his deposition he
5 specifically recited that the possible benefit
6 that may arise to the extent of the two pools is
7 leasing or renting -- and I'm quoting now -- "and
8 I don't know what the arrangement is."

9 And, therefore, if he doesn't know what
10 the arrangement is, he can have no opinion as to
11 whether or not consideration was given for the
12 transfer.

13 THE PRESIDING OFFICER: I'll allow that
14 objection. Ask your question differently.

15 BY MR. VOLINSKY:

16 Q. You looked at all the balance sheets
17 around the 2002, 2003, 2004 timeframe?

18 A. I did.

19 Q. Did you find a single to and from that
20 in any way compensated HealthTrust for its
21 contribution of 75 percent of the \$5 million real
22 estate?

23 A. I did not.

1 MR. SATURLEY: Again. Again --

2 THE PRESIDING OFFICER: Go ahead,
3 Mr. Saturley.

4 MR. SATURLEY: Again, I don't
5 understand, if this is a real estate transaction
6 that is being discussed, transfer of a significant
7 piece of real estate, if he doesn't know what the
8 arrangement is, and if he concedes as he did at
9 his deposition that being able to occupy space at
10 a discount from a fair market value rent would
11 indeed constitute consideration -- conceded
12 that -- but he doesn't know what the arrangement
13 is. And if he's not qualified and has not been as
14 some sort of real estate expert, then he cannot
15 offer an opinion whether or not fair consideration
16 was given to that transaction.

17 THE PRESIDING OFFICER: I'm going to
18 deny that objection. I'll allow your answer, sir,
19 with respect to did you see any consideration
20 reflected in the reports you reviewed. And your
21 answer is?

22 THE WITNESS: I did not.

23 THE PRESIDING OFFICER: Okay, you did

1 not. Please proceed.

2 MR. VOLINSKY: Thank you.

3 BY MR. VOLINSKY:

4 Q. The \$5 million property for which you
5 saw no consideration in the documents now has a
6 carrying value of 10 million?

7 A. Approximately.

8 Q. Thank you. Yesterday we talked about
9 RBC at 2.0 as the insurer's commissioner's
10 guideline and laws of the 50 states for insurance
11 companies, do you remember that?

12 A. I did. The only exception I make to
13 that comment suggested New York has a slightly
14 different capital methodology.

15 Q. Right. Excepting that, are you able,
16 have you done the calculation of what a 2.0 RBC
17 would have resulted in for net assets for the
18 HealthTrust for '08, '09, and '10?

19 A. I have.

20 Q. And are you also aware of what the
21 actual net assets were for HealthTrust in '08, '09
22 and '10?

23 A. I am.

1 Q. Can you come to the board very quickly,
2 set out the actual net assets, the 2.0 level, and
3 then net them out for us so we have those numbers.

4 THE PRESIDING OFFICER: Mr. Saturley.

5 MR. SATURLEY: I'm going to object,
6 your Honor. RBC is a very complicated
7 calculation, which he conceded yesterday. It's a
8 formula. It's done through a very complex
9 formula, most of them indeed are proprietary in
10 terms of how they're calculated. It takes an
11 actuary to develop and to determine what an RBC is
12 with regards to any particular institution.

13 Indeed, RBC can be calculated in a
14 number of different ways depending upon the
15 factors that are introduced into the formula, and
16 there are materials in Mr. Coutu's file that say
17 exactly that. A number of factors must be
18 considered in determining the RBC.

19 He's not an actuary. He's not
20 demonstrated other than being awareness -- being
21 aware generally in his industry that RBC is used,
22 he has not been qualified and indeed is not
23 qualified to calculate what RBC is.

1 They have an actuary that they have
2 tendered as an expert coming up in their lineup
3 who may be qualified to talk about that, but this
4 gentleman is not an actuary, has no actuarial
5 experience, has not been through that work, and
6 therefore, for him to calculate the RBC with
7 regards to LGC is inappropriate.

8 THE PRESIDING OFFICER: Mr. Volinsky?

9 MR. VOLINSKY: Yes, your Honor. I was
10 trying to speed things along by leaving out a few
11 steps. I'm glad to address this step by step.
12 But I will represent to you that Mr. Coutu is
13 quite capable of doing the proportional math,
14 which is taking stated RBCs of whatever they are,
15 and figuring if the RBC is 4.2 by their numbers in
16 2010, how much would it be at 2.0.

17 It doesn't mean that he's actuarially
18 calculated how to arrive at a RBC, it means that
19 he can do the basic math to say if your RBC is 4.2
20 and the state levels are 2.0, that means you have
21 about two times too much. That's the level of the
22 calculation I'm asking him to do on the board now.

23 THE PRESIDING OFFICER: Okay. And I'm

1 going to allow you to do that.

2 MR. VOLINSKY: Thank you.

3 THE PRESIDING OFFICER: The objection
4 is denied.

5 MR. VOLINSKY: Come up. Do you have a
6 marker? Yes.

7 BY MR. VOLINSKY:

8 Q. Why don't you do it right here, give us
9 across the top, '08, '09, '10, stated net assets,
10 what it would be at 2.0, and the math. Let me
11 hold this.

12 Okay. Tell us what you've done here.
13 And stand in a way so that the hearing officer can
14 see.

15 A. If I may, this is not, quote, the
16 calculation methodology for RBC. This is pure
17 mathematics.

18 Let me walk you through it. In 2008
19 the net assets, excluding two components, the
20 unrealized gain or loss, depending on whether it
21 would be a positive number or a negative number,
22 and excluding the investment in capital assets --

23 Q. Stop, stop. Unrealized gain or loss in

1 investments?

2 A. Excuse me, in investments.

3 Q. Okay, go ahead.

4 A. And also excluding the investment in
5 capital assets, what you're really left with are
6 the most salient components of net assets. It
7 consists of unrestricted and board designated.

8 Board designated, again, is that level
9 which the LGC board determined is appropriate.
10 This is actually a 4.7. It's the 4.2 plus the
11 capitalized administrative expenses .5. You have
12 to add both of those numbers together, and that
13 gives you 94 million, rounded.

14 Now, the Siegel Company, which is an
15 actuary, has calculated what is the effective RBC
16 for purpose of 2008. I did, as Mr. Volinsky
17 stated, compare that calculation using proportional
18 mathematics to be able to say to this -- to this
19 hearing that that is a correct number.

20 Now, when I say pure mathematics, the
21 way you actually come up with the equivalent of a
22 200 RBC is to take the 94 million and divide it by
23 6.4, and that gives you a number which in RBC speak

1 is called the authorized control level. It is a
2 hypothetical capital required for an insurance
3 company based on the type of insurance company it
4 is, and based on the compositions of its balance
5 sheet.

6 Q. Let me ask you a question. ACL equals
7 one RBC?

8 A. One RBC or, percentage speak, 100
9 percent.

10 Q. And to get to 200 you double it?

11 A. Correct. That's why I say it's pure
12 mathematics.

13 In 2009, the unrestricted account was a
14 negative 757,000. There was board designated of 77
15 million 885. In this case it's a reduction because
16 of the negative. The actual effect of RBC was 4.8.

17 Same mathematics, divide this number by
18 4.8, and then multiply that result by 2, and the
19 200 percent or 2.0 equivalent surplus would be
20 32 million 137. In 2010, again, a negative
21 unrestricted account, 974,000, board designated
22 84 million, rounded, netting those two, 83.4. I
23 might note that in 2010 now we have the actual and

1 the target RBC both coming in at 4.2.

2 You take the 83 million, divide it by
3 4.2, you get the 100 percent ACL, multiply that by
4 2, and the RBC at 200 percent for LGC HealthTrust
5 would be 39 million 732.

6 The last step of the process is to say
7 if, indeed, this was a regulated company under the
8 laws of the state of New Hampshire, and, if indeed
9 its RBC were set at 200 percent, then what would be
10 the excess surplus based on the amount of net
11 assets actually held in the balance sheet.

12 And at 2008 the excess surplus would be
13 64 million 648. In 2009 the excess surplus would
14 be 44,991,000, and in 2010 the excess surplus would
15 be 43,706,000.

16 Q. One last question for you. These terms
17 unrestricted and designated board assets, those
18 are actually what those accounts are called at
19 LGC?

20 A. That's correct. The outside auditor,
21 Berry Dunn, has used this nomenclature beginning in
22 2003 to define that target level set by the board,
23 and then the excess above that that the accounting

1 firm referred to as unrestricted.

2 Q. Okay, if you could return to this seat.

3 MR. VOLINSKY: I'd ask that this chart
4 be marked as Exhibit 70, please.

5 THE PRESIDING OFFICER: Mr. Volinsky,
6 that chart, the information in that chart, is that
7 contained in your previously admitted
8 Exhibit No. 7? I see all figures including the
9 RBC confidence level footnoted at 4. I see un --
10 I see the categories unrestricted, designated.

11 MR. VOLINSKY: I believe the piece
12 that's not there --

13 THE PRESIDING OFFICER: Okay.

14 MR. VOLINSKY: -- is the bottom
15 subtraction.

16 THE PRESIDING OFFICER: Very good. And
17 I'm sorry, while I was in my own thinking, I
18 missed the suggested number that you were going to
19 have this admitted as.

20 MR. VOLINSKY: 70.

21 THE PRESIDING OFFICER: 70. Okay, any
22 objection? Okay, would you mark that, then,
23 please, as BSR 70. Thank you, Mr. Frydman. Go

1 ahead, Mr. Volinsky.

2 (BSR 70 was marked and entered into evidence.)

3 MR. VOLINSKY: Okay.

4 BY MR. VOLINSKY:

5 Q. So one way of looking at excess capital
6 is the RBC mathematical analysis that you just did
7 for us, right?

8 A. That's correct. Again, it's based on
9 the national standard that 200 percent constitutes
10 a level of surplus that is deemed to be aggregate.

11 Q. Is there another way to look at the
12 balance sheet?

13 A. There is.

14 Q. Accepting all of their operational
15 numbers as being accurate, is there another way to
16 look at whether there's excess capital in this
17 balance sheet?

18 A. There is.

19 Q. Does it relate to their investments?

20 A. It does.

21 Q. Okay, I just want to make sure I have
22 the right exhibit. This is BSR 9. And if you'll
23 turn to it in your looseleaf in front of you,

1 you'll find a paper copy that you can look at,
2 just to make this easier. Oh, I thought I took
3 the laser away from you. It was making me dizzy.

4 A. No. May I move?

5 Q. Yes. Just don't block the hearing
6 officer. Why don't you come --

7 A. Maybe I should come over here.

8 THE PRESIDING OFFICER: Just stay near
9 a microphone, Mr. Coutu, if you will.

10 BY MR. VOLINSKY:

11 Q. You can take my place.

12 A. Let me just recap very quickly.

13 THE PRESIDING OFFICER: Excuse me,
14 Mr. Coutu, would you respond to his question?

15 THE WITNESS: Excuse me?

16 BY MR. VOLINSKY:

17 Q. So this is plaintiff's Exhibit 9,
18 right; petitioner's Exhibit BSR 9. This is from
19 yesterday, the compilation of HealthTrust's
20 investments '08 to '10 by the maturity levels,
21 okay?

22 And so is there some way you can
23 discuss or describe for us excess capital in the

1 balance sheets as you've analyzed them based on
2 the maturity rates of the investments at LGC?

3 A. I can.

4 Q. All right. And would you explain how
5 you make that analysis?

6 A. If we could scroll to your right.

7 Q. Yup.

8 A. Okay. I explained in yesterday's
9 discussion of the investments that -- that if one
10 was to be guided by the claims manifestation period
11 which was shown in the exhibit -- and I don't
12 remember how it was marked, but it was the ten year
13 claim development summary -- that the preponderance
14 of claims for healthcare manifest during the policy
15 year, and then there was some what I called
16 yesterday "noise" that occurred in one year
17 following and -- in one year, 2001, and two years
18 following the expiry of the policy.

19 Predicated therefore on when claims are
20 submitted, adjusted and paid, I made the
21 observation that LGC HealthTrust has investments
22 substantially in excess of the operating cycle of
23 claims, and suggested in yesterday's testimony that

1 I believe this is the one to five-year bucket. I
2 believe this is five to ten -- yes, one to five --
3 this is five to ten, and this is ten-plus years.
4 That these three duration market of securities was
5 excess of what was actually needed to support and
6 satisfy the operating needs of HealthTrust.

7 I added this number, 8.5 and this
8 number 4.2 -- 14.2 -- and that comes out to be
9 22.8. I would argue again since the preponderance
10 of claims manifest within the policy period or the
11 \$12.9 million for all three, 1, 2, 3, represents
12 investments based on their duration, again, that
13 means maturity, are a cash excess of what's needed
14 in the normal operating cycle of HealthTrust. If I
15 add the 12 million 9 to the 22.9, I come up with a
16 total of approximately 35.7 million.

17 Now, to finish answering the question,
18 I have to then go to net assets. I guess I could
19 do that here.

20 Q. Just do it on the chart that's blank
21 right now, or paper that's blank.

22 A. The methodology works -- I think I need
23 the black one.

1 Q. Okay.

2 A. The methodology works for each of the
3 years, so let me concentrate on 2010 to explain how
4 I arrived at what will be my conclusion.

5 If you recall, I described the -- the
6 2010 net assets as being the sum of the negative
7 974, and restricted, and the board designated of
8 4.2, which is 84 million 412. So staying with
9 that, I have a net designated assets of 83 million,
10 438.

11 Mr. Volinsky referred to the term
12 proportional mathematics, and so you set this as
13 the equation. We know that that 4.2 is in the
14 notes of the financial statements. Second is we
15 know that 35.7 million is what I conclude are
16 excess investments.

17 So if I subtract that delta, I get
18 47,700 rounded. Proportional mathematics simply
19 you cross-multiply, and then divide. And the
20 product of this algebraic equation says that the
21 RBC on this methodology --

22 MR. SATURLEY: Objection, your Honor.

23 THE PRESIDING OFFICER: Mr. Saturley.

1 MR. SATURLEY: The time that he gave
2 his report no such calculation had been done, so
3 therefore I consider this to have been an
4 undisclosed opinion.

5 THE PRESIDING OFFICER: Mr. Volinsky.

6 MR. VOLINSKY: Absolutely that is
7 untrue. 2.42 is absolutely quoted in his
8 deposition because he was asked to do just this
9 analysis. And if you give me a break, I'll find
10 the page for you.

11 THE PRESIDING OFFICER: Mr. Saturley.

12 MR. SATURLEY: May I respond? I
13 acknowledge that he did it at his deposition
14 because we asked him to do it, but he had not done
15 it at the time of his report, and so therefore we
16 did not go into his deposition prepared to examine
17 him on it, and that's the point that I'm making.

18 THE PRESIDING OFFICER: In essence are
19 you saying that you are being prejudiced by
20 surprise?

21 MR. SATURLEY: I am, your Honor. I
22 went into his deposition preparing to ask him
23 certain things with regard to his report. We then

1 pursued certain aspects during his deposition to
2 see where they led, but did not understand that
3 those to be his opinions.

4 THE PRESIDING OFFICER: Mr. Volinsky.

5 MR. VOLINSKY: I don't know what to
6 say.

7 THE PRESIDING OFFICER: Okay, very
8 good. Objection is denied. Please continue with
9 your calculation. You'll have your opportunity on
10 cross-examination, Mr. Saturley.

11 MR. SATURLEY: Thank you.

12 BY MR. VOLINSKY:

13 Q. 4.2, you were explaining how you got
14 there.

15 A. Again, using a algebraic calculation,
16 we know the 83 million rounded is equal to 4.2; the
17 source of that calculation is the audited financial
18 statements. And then I take the position that
19 35.7 million in investment durations longer than
20 the cash requirements of this operating healthcare
21 company would indicate to me that they're running
22 a -- a substantially greater amount of surplus or
23 net assets than the operations require or dictate.

1 I netted the two, and I got to the
2 \$47.7 million, adjusted that assets, and then using
3 the proportional mathematics I'm approximating what
4 the RBC equivalent would be with that adjustment.

5 I conclude, therefore, that the RBC
6 using this methodology is 2.4, whereas the
7 methodology that's used at the state level would
8 indicate at 200 percent a slightly different or
9 lesser amount of capital or surplus.

10 Q. Thank you, if you'd return to your
11 seat.

12 MR. VOLINSKY: I'd ask that this chart
13 would be -- 2.4 be marked as Exhibit 71, BSR 71.

14 THE PRESIDING OFFICER: Mr. Saturley,
15 any objection? Mr. Gordon, Mr. Howard, any
16 objection?

17 MR. SATURLEY: I have no objection to
18 the chart and the math that he's done. I object
19 to the premise, and I understand that I'll be able
20 do that during cross-examination.

21 THE PRESIDING OFFICER: Yes, you will.
22 No objection, therefore it is admitted as BSR 71.

23 (BSR 71 was marked and entered into evidence.)

1 THE PRESIDING OFFICER: And,
2 Mr. Volinsky, as we discussed earlier, I'm going
3 to put a little more burden on you for direct
4 questions of your expert, and I'm going to put a
5 time limit on his response to your question
6 commensurate with its complexity. Reasonable
7 complexity. Thank you.

8 MR. VOLINSKY: I'll just take the
9 sticker.

10 THE PRESIDING OFFICER: Be careful this
11 time, Mr. Volinsky. Please proceed.

12 MR. VOLINSKY: Thank you.

13 BY MR. VOLINSKY:

14 Q. So there was testimony, argument
15 yesterday about endangering the enterprise were
16 capital to be removed. And I want to ask you
17 referencing Exhibit 1, which is in the book in
18 front of you -- if you give me just a second, I'll
19 put it on the screen.

20 THE PRESIDING OFFICER: Mr. Volinsky,
21 if I might inquire while we're all getting settled
22 here, with respect to Exhibit 1, is this the same
23 chart that we saw yesterday that was laying up

1 here?

2 MR. VOLINSKY: Yes.

3 THE PRESIDING OFFICER: And are you
4 going to ask different questions than yesterday,
5 or are we going to look or have another
6 explanation different from yesterday with respect
7 to what's depicted on that chart?

8 MR. VOLINSKY: What we're going to have
9 is a brief discussion about what the consequences
10 to this organization would be were 35 million
11 removed from their balance of net assets so that
12 we can specifically address the claim that to do
13 so would endanger the solvency of the enterprise.

14 THE PRESIDING OFFICER: Okay, that's
15 the question then, correct?

16 MR. VOLINSKY: Yes.

17 THE PRESIDING OFFICER: Okay, the
18 effect of the 35 million if subtracted from what's
19 depicted there.

20 MR. VOLINSKY: Right.

21 THE PRESIDING OFFICER: Okay, go ahead.

22 BY MR. VOLINSKY:

23 Q. Can I ask you to pop out Exhibit 1,

1 because mine's in my book somewhere. And you'll
2 be able to see the blowup.

3 So BSR Exhibit 1, this tells us
4 hundreds of millions is the scale, years by
5 bottom, paid claims dark blue, contributions light
6 blue, claims in green, total net assets in red.

7 Okay, so the question on the floor is,
8 particularly in '10, which is the last year that
9 we have numbers for, if you were to pull
10 35 million out, first of all, in the color chart,
11 where would the 35 million come from?

12 A. It would be a reduction in this red bar
13 in year 2010, and it's the red bar in each of the
14 earlier years to 2002.

15 Q. Okay. And if you were to reduce --

16 MR. SATURLEY: May I?

17 THE PRESIDING OFFICER: Excuse me.

18 Mr. Saturley.

19 MR. SATURLEY: May I have a
20 representation that this was part of his report
21 and his opinions? Because if it was, it escapes
22 me.

23 THE PRESIDING OFFICER: Mr. Volinsky.

1 MR. VOLINSKY: I think consistent with
2 yesterday's testimony, we heard a fair amount of
3 opinion from this expert about what happens to the
4 balance sheet if this is removed, and he's going
5 to say exactly what happens to the balance sheet
6 as it happens to be compared to the dark blue
7 column.

8 That's the level of the analysis that
9 you're about to hear. And that's perfectly
10 consistent and part of his expert disclosures,
11 it's talked about in depositions, it's alluded to
12 in the report.

13 THE PRESIDING OFFICER: We're going to
14 be going awfully slowly if this is going to
15 continue. Why don't we call a recess right now,
16 and could I have lead counsel from BSR and LGC
17 come forward, please.

18 (Recess taken.)

19 THE PRESIDING OFFICER: Okay, following
20 a brief bench conference, I have denied the
21 objection of LGC's counsel.

22 Mr. Volinsky, please continue. The
23 question on the floor is the effect of removing 35

1 from the red shaded amounts. You're allowed that
2 question on that data at this time, and that's it.

3 Do you understand the question,
4 Mr. Coutu?

5 THE WITNESS: I believe I do.

6 THE PRESIDING OFFICER: Good. Give me
7 your answer, please, as concisely as you can.

8 THE WITNESS: Again, the red represents
9 net assets, and net assets is on the balance
10 sheet. The rest of this for the most part with
11 the exception of reserves really is about the
12 income statement. The income statement is your
13 revenues and your expenses, and after netting that
14 it's either a profit or loss.

15 BY MR. VOLINSKY:

16 Q. Let's focus on the net asset piece.

17 THE PRESIDING OFFICER: Thank you,
18 Mr. Volinsky.

19 A. So what happens is if this is reduced,
20 okay --

21 THE PRESIDING OFFICER: By 35 million?

22 THE WITNESS: By 35 million.

23 THE PRESIDING OFFICER: Thank you.

1 A. -- the key aspect is what does that
2 affect operations. What's important in this chart,
3 this blue line represents premiums or member
4 contributions.

5 MR. HOWARD: If I may object?

6 THE PRESIDING OFFICER: Mr. Howard.

7 MR. HOWARD: It's one thing to do the
8 math and shrink the red line, he's now talking
9 about the effect on operations. And that opinion
10 has not been disclosed to me, I don't know if it's
11 been disclosed to others.

12 THE PRESIDING OFFICER: It was my
13 mistake, and I should have had lead counsel -- all
14 lead counsel come to table. I understand that it
15 has not been disclosed in deposition to you. He
16 is responding to questions that were asked
17 yesterday.

18 I am not -- I do not determine at this
19 time that any prejudice that you might be
20 concerned about suffering right now isn't
21 something that can't be corrected through the
22 duration of these proceedings.

23 I'm going to let him go forward, if I

1 think he gets too far then I will strike his
2 response if the response gets into areas where I
3 think you or other respondents, or any parties,
4 have been prejudiced.

5 MR. HOWARD: Thank you.

6 THE PRESIDING OFFICER: So I will deny
7 your objection at this time. Can we please get
8 through this? Thank you, Mr. Volinsky. I know
9 you're trying, and I know that they are trying to
10 represent their clients.

11 MR. VOLINSKY: That's fine.

12 BY MR. VOLINSKY:

13 Q. Okay. So, you were saying that
14 reducing the 35.7 million from the red compared to
15 operational expenses, pick up there.

16 A. Let me state this in the extreme. Make
17 believe the red is nothing, all right? What does
18 that mean to this company? The premiums is in
19 blue. I don't know what that color is, that's the
20 claims paid. And what that is telling me is that
21 in every year from 2002 to 2010 LGC HealthTrust has
22 been able to charge sufficient premiums to cover
23 paid claims. I don't know if it shows expenses in

1 this chart. I don't believe it does.

2 Q. It does not.

3 A. Okay, it's not. I can tell you that
4 what is missing from my statement to be able to
5 make this statement clearly visible is that there
6 are also expenses with respect to LGC. And I can
7 tell you from this chart here those expenses were
8 \$13.7 million in 2010 and 14,5 -- call that
9 28 million.

10 THE PRESIDING OFFICER: And when you
11 say here, because a record is being made of these
12 proceedings, would you please tell us what you're
13 referring to by either exhibit number, Counsel, or
14 by the title of the document.

15 MR. VOLINSKY: I'll get it. It is 7.
16 Exhibit 7, BSR 7.

17 THE PRESIDING OFFICER: Okay. Thank
18 you, very much. BSR 7 is the reference, and,
19 Mr. Volinsky, I'm still waiting to hear on the
20 effect of 35 million, and if we're not going to be
21 able to do it on this fourth try, I'm going to
22 rule it redundant, and I'm going to move on to a
23 different topic.

1 MR. VOLINSKY: You know, I object to
2 that.

3 THE PRESIDING OFFICER: And you may
4 object, and I'm denying your objection. The
5 question has been asked, we don't have an answer,
6 and I would like to hear an answer.

7 MR. VOLINSKY: I'd like to get you one,
8 sir.

9 BY MR. VOLINSKY:

10 Q. Give us the answer. If you pull 35
11 million out of the net assets -- or do it your
12 way. Pull all the net assets. Still an operating
13 company financially?

14 A. Yes.

15 Q. Now, give them 35 -- give them
16 43 million -- I'm sorry, give them 40 million
17 back.

18 A. No, what I was doing here is --

19 MR. SATURLEY: What's the question?

20 THE PRESIDING OFFICER: Excuse me.

21 MR. VOLINSKY: Let me finish the
22 question, if I may.

23 THE PRESIDING OFFICER: If you can make

1 it a succinct question.

2 MR. VOLINSKY: I will.

3 BY MR. VOLINSKY:

4 Q. Give them 40 million back. So instead
5 of taking out all of the red, give them
6 40 million. Still an operating company without
7 danger of insolvency?

8 A. It is.

9 Q. Thank you. You can sit down.

10 MR. HOWARD: And, your Honor?

11 THE PRESIDING OFFICER: Yes.

12 MR. HOWARD: That opinion was not been
13 disclosed to my client. I haven't been charged
14 with anything here, but I sure as hell don't need
15 to sit here and listen to opinions that haven't
16 been disclosed. And pardon my language.

17 MR. SATURLEY: Join in the objection.

18 THE PRESIDING OFFICER: Mr. Gordon,
19 would you like to get in on that one?

20 MR. GORDON: Silently joining.

21 THE PRESIDING OFFICER: Mr. Volinsky.

22 MR. VOLINSKY: Thank you.

23 THE PRESIDING OFFICER: Mr. Volinsky,

1 do you have any response to their objection?

2 MR. VOLINSKY: Yeah, Mr. Howard wasn't
3 at the deposition.

4 MR. HOWARD: But I can read.

5 MR. VOLINSKY: I hope so.

6 MR. HOWARD: And that wasn't disclosed
7 to me. The effect of this wasn't disclosed.

8 MR. VOLINSKY: Your Honor, maybe this
9 is a good time for a short break.

10 THE PRESIDING OFFICER: The request is
11 for a short break. Any objection to that,
12 Counsel? All right.

13 MR. SATURLEY: No objection.

14 THE PRESIDING OFFICER: We'll be in
15 recess then for ten minutes or so.

16 MR. VOLINSKY: Perfect.

17 THE PRESIDING OFFICER: As our morning
18 recess.

19 (Recess taken.)

20 THE PRESIDING OFFICER: Returning on
21 the record then from our recess and my
22 conversation with counsel. I'm going to strike
23 Mr. Coutu's last answer, and I'm going to ask --

1 I'm going to grant Mr. Howard's objection as to
2 prejudice which was joined by Mr. Saturley and
3 Mr. Gordon, and I'm going to ask Mr. Volinsky to
4 ask a different question as we go forward in this
5 area, and instruct the witness to the extent that
6 you can in your answer, Mr. Coutu, try not to be
7 redundant. And I will watch Mr. Volinsky if the
8 question is something we have already discussed.

9 THE WITNESS: Okay.

10 THE PRESIDING OFFICER: With all of
11 those instructions and rulings, Mr. Volinsky,
12 would you still proceed? Yes.

13 BY MR. VOLINSKY:

14 Q. Let me see if I can ask it this way.
15 If we were in BSR 1 to remove 35, 40 million from
16 the 2010 net assets, what's the impact on the
17 balance sheet here?

18 A. Well, besides the obvious, the delta
19 between the 83.4 million less the 35 million gives
20 you residual net assets, rounded, 48 million.

21 Q. So there would still be half this red
22 column?

23 A. Roughly half.

1 Q. Thank you.

2 THE PRESIDING OFFICER: Thank you.

3 BY MR. VOLINSKY:

4 Q. One or two cleanup points. We went
5 over this exhibit which is BSR 9 that sets out the
6 investments, and this comes from the audited
7 financial statements, correct?

8 A. That is correct.

9 Q. Is there an investment that LGC
10 HealthTrust holds that isn't included in this
11 calculation?

12 A. Two, just to be crisp. There is first
13 of all cash equivalents are nondischarge, and
14 that's the \$52 million number footnoted.

15 Q. Right.

16 A. The second is the accountants did not
17 embrace or include in this chart --

18 MR. GORDON: I'm going to object, your
19 Honor, that's not responsive to the question.

20 THE PRESIDING OFFICER: Say again?

21 MR. GORDON: That's not responsive to
22 the question. He asked about the two figures
23 there and we are getting another lengthy

1 discussion as to about what's in not -- what's not
2 in that figure. I ask that he limit his answers
3 to the questions being posed.

4 THE PRESIDING OFFICER: Granted. Go
5 ahead, Mr. Volinsky.

6 BY MR. VOLINSKY:

7 Q. Same question. Is there an investment
8 that's not included in the audited financial that
9 you displayed in Exhibit 9?

10 A. Yes.

11 Q. What is it?

12 A. HealthTrust maintains an investment in
13 something called the New Hampshire Public Deposit
14 Investment Pool pursuant to RSA 383. That amount
15 is rounded \$5.9 million.

16 Q. People call that PDIP?

17 A. PDIP.

18 Q. So your analysis is without the extra
19 money in PDIP?

20 A. That is correct.

21 MR. VOLINSKY: There is one exhibit
22 when I was housecleaning which I apologize I
23 overlooked. It's Exhibit 4. Let me ask you as I

1 did this morning similarly. Four is a chart with
2 the numbers behind it. Do the numbers behind
3 chart 4 appear accurate to you?

4 A. They do.

5 MR. VOLINSKY: Move to strike 4 and ask
6 for its admission.

7 THE PRESIDING OFFICER: Any objection
8 to the admission of BSR 4? Again, the numbers I
9 am presuming were done by Mr. Larochele, and the
10 chart was done by Mr. Larochele.

11 MR. VOLINSKY: Same approach, yes.

12 THE PRESIDING OFFICER: Who is employed
13 by the BSR. Mr. Saturley.

14 MR. SATURLEY: I believe that at least
15 some of the numbers are either inaccurate or I
16 don't understand where they come from, so
17 therefore at this point I will not agree to the
18 admission, but it's essentially the same objection
19 that I had.

20 THE PRESIDING OFFICER: I understand.
21 So I will allow admission, again looking forward
22 to counsel comparing certain notes as we
23 develop -- as we move forward, and BSR 4,

1 therefore, is admitted. Please proceed,
2 Mr. Volinsky.

3 (BSR Exhibit 4 was entered into evidence.)

4 BY MR. VOLINSKY:

5 Q. Very quickly, just summing up,
6 Mr. Coutu --

7 THE PRESIDING OFFICER: Summing up but
8 not testifying, correct?

9 MR. VOLINSKY: Wouldn't think of it,
10 your Honor.

11 BY MR. VOLINSKY:

12 Q. In Exhibit 9, if we use this approach
13 to right sizing the balance sheet with the 35.7
14 removed, is there anything else that needs to be
15 done to the balance sheet that you've described in
16 your testimony that needs to be done to right size
17 the categories?

18 A. I think that is sufficient for
19 adjustment to the net asset column accomplished by
20 the reduction in the investment accounts.

21 Q. Okay, and what about the workers' comp.
22 subsidy?

23 A. There is a note that was entered into

1 between workers' comp. and HealthTrust, I believe
2 17.1 million. My calculation of the actual
3 transfers that were made in the form of capital
4 contribution of LGC is that that's 18.3 million.
5 That --

6 Q. Let me stop you there. Is that
7 18 million within that 35.7 or in addition to?

8 A. In addition to.

9 Q. Go ahead, finish your point. The 18.3.

10 A. The 18.3 is the actual amount of
11 capital that was contributed by LGC to workers'
12 comp. trust.

13 Q. You made comments about noncash
14 transfers that were allowed in after objection.
15 Those amounts that were discussed as the noncash
16 transfers, are they within the 35.7, or in
17 addition to?

18 A. In addition.

19 Q. And if you gave me a rounded number for
20 the right -- the due and owing on that noncash,
21 given the current approximate 10 million carrying
22 value, how much goes to the trust?

23 A. I will note, just to be clear, that a

1 carrying value on LGC's consolidated financial
2 statement, approximately 10 million, is not
3 necessarily indicative of the fair market value.

4 Q. Understood.

5 A. But based on the contributions that
6 were made by HT and PLT, then approximately 90
7 percent of that 10 million would be HT's arguable
8 claim, I guess, on the real estate; and the delta
9 of 9 percent would be PLT. The reason it doesn't
10 add up a 100 percent because there was a slight
11 contribution made by workers' comp. of \$302,000.

12 Q. So we're talking 37.5 million, 18.3 and
13 about 9 million?

14 A. Correct.

15 MR. VOLINSKY: Thank you. I have no
16 further questions. Oh, I do have another
17 question.

18 BY MR. VOLINSKY:

19 Q. At book 4, Exhibit 68. Book 4,
20 Exhibit 68, page 42. You see I just numbered
21 everything consecutively. Does your report appear
22 beginning at page 42?

23 A. It does.

1 MR. VOLINSKY: I move to strike the ID
2 on 68 as far as it relates to Mr. Coutu's report.
3 All the reports are together there, so I can't
4 move to strike it all.

5 THE PRESIDING OFFICER: And to have it
6 admitted as 68. And would I be -- is there any
7 way we can make it a sub? Can it be a 68A or
8 something to that effect?

9 MR. VOLINSKY: Sure. If we follow the
10 order in the table of contents, it would be 68B.

11 THE PRESIDING OFFICER: Very good.
12 Okay, motion to strike identification and admit
13 BSR Exhibit 68 beginning at page 42 now to be
14 admitted as BSR Exhibit 68B, as in boy. Any
15 objection?

16 MR. SATURLEY: I'm going to object,
17 your Honor.

18 THE PRESIDING OFFICER: Mr. Saturley.

19 MR. SATURLEY: I think that as I've
20 already spoken yesterday and today, I think that
21 there is a number of flaws and inaccuracies in the
22 charts that are contained both in the body and as
23 exhibits to the material, but more importantly,

1 your Honor, the real point I'd like to make is
2 that the report goes on for some length, 19 pages.

3 There's a lot in there about which he
4 hasn't testified, and so accepting this as a full
5 exhibit means that those opinions then become part
6 of the record without even having to speak to
7 them. And I don't believe that that's
8 appropriate; therefore I object.

9 THE PRESIDING OFFICER: Mr. Saturley,
10 in the -- in considering your objection, the
11 expert report will be subject to your
12 cross-examination whether he's testified or not.

13 By the admission of this complete
14 document you can cross-examine him and you are not
15 outside, if you will, the direct testimony
16 parameters. And, Mr. Gordon, you'd like to be
17 heard?

18 MR. GORDON: Possibly a suggestion
19 would be that the testimony -- that the testimony
20 that he has given for his opinions, because there
21 are a range of different opinions in his report,
22 that if we could have an agreement that the
23 opinions that he did not testify are not being

1 introduced in this case for purposes of your
2 understanding and adjudication, then that could
3 greatly lessen the amount of cross-examination and
4 not allow us to go down certain rabbit holes that
5 we don't need to go through.

6 So if this is being introduced to
7 support what it is he has already testified to as
8 part of his expert report, and maybe -- I don't
9 want to speak for Mr. Saturley, because this is
10 more his fight than mine, but trying to be of some
11 mild assistance to you and to get this moving
12 along, if it's going to be limited that way, then
13 perhaps the issues become less so because we will
14 not need to cross-examine him on a wide range of
15 issues that he opined on.

16 THE PRESIDING OFFICER: Mr. Howard, did
17 you have something that you wanted to weigh in on
18 with respect to this?

19 MR. HOWARD: With apologies to
20 Mr. Gordon, I don't mean to undermine anything
21 that he just said, I would object to the report
22 coming in for a couple of reasons.

23 He didn't testify to several things in

1 his report, but more importantly, the report
2 constitutes nothing more than just hearsay. It's
3 what he wrote, it's what he at least claims to
4 have put us on notice off. Anything -- just
5 admitting the report now is just pure redundancy.
6 It's not being offered for anything other than,
7 here, this is what I wrote.

8 If the bureau wanted to admit the
9 testimony, they elicit it from the witness; simple
10 as that. It's not a simple matter. If this
11 hearing was going to be let's just write a bunch
12 of reports and give them to you, we would have
13 been done yesterday. It's not that. So I would
14 object to the report coming in as essentially
15 redundant hearsay.

16 THE PRESIDING OFFICER: Well, covering
17 the waterfront; Mr. Volinsky?

18 MR. VOLINSKY: Yeah, I have a couple of
19 responses.

20 THE PRESIDING OFFICER: Sure. Please
21 approach the microphone.

22 MR. VOLINSKY: First, the hearsay rules
23 don't apply in this proceeding. Second, you

1 directed us to meet prior to the hearing to
2 exchange exhibits. That did not occur through no
3 fault of the bureau's.

4 The Local Government Center has marked
5 as exhibits in this case all of the reports of its
6 expected testifying witnesses. If the witness
7 testifies, we do not object to their putting in
8 all of their reports. And so for me now to be
9 told that I have to go through each and every
10 piece of the report after I've just concluded my
11 examination of the witness severely prejudices my
12 client, the bureau, because the rules have changed
13 midstream.

14 So if that is going to be the ruling, I
15 would ask to reopen, go back through anything I
16 haven't touched on. But I've engaged in this
17 process in a way trying to get the more salient
18 points before you, and not to hit every little
19 chit and chat in front -- in the -- in the report.

20 So I respectfully suggest that the
21 hearsay rules that don't apply, and we don't
22 object to their reports coming in, which we've
23 advised them, as long as the witness testifies,

1 the opportunity. I believe that the position that
2 we would like to take as the respondents is that
3 understanding that the hearsay rules don't apply
4 and trying to balance that against the concern
5 that there's material in this report that hasn't
6 been testified about, and that we shouldn't have
7 to address for the first time on cross-examination
8 because it happens to be in the report, we ask you
9 to rule as follows:

10 That to the extent that there has been
11 live testimony on a topic, and that topic is then
12 addressed in the expert report, that that may be
13 accepted as part of the record. But to the extent
14 that a report contains something to which there
15 has been no testimony, that that is not accepted
16 as part of the record and may not be considered by
17 you.

18 THE PRESIDING OFFICER: Was the
19 deposition taken of Mr. Coutu?

20 MR. SATURLEY: The deposition was taken
21 of Mr. Coutu.

22 THE PRESIDING OFFICER: Were inquiries
23 made of Mr. Coutu concerning his report, or did

1 you have opportunity to do so?

2 MR. SATURLEY: Certainly during the
3 deposition we asked him about his report.

4 THE PRESIDING OFFICER: Did you ask him
5 about all aspects of his report? Fair --

6 MR. SATURLEY: Most likely.

7 THE PRESIDING OFFICER: Okay.

8 Mr. Volinsky, anything further from you?

9 MR. VOLINSKY: No, sir.

10 THE PRESIDING OFFICER: I'm going to
11 admit -- I'm going to deny your objection. I'm
12 going to admit BSR 62B --

13 MR. VOLINSKY: 68B.

14 THE PRESIDING OFFICER: I'm sorry, 68B,
15 which is the report of Mr. Coutu. I'll assign it
16 appropriate weight. I'll allow cross-examination
17 on all aspects of his report. And I understand on
18 that ruling, Mr. Volinsky, that you've rested --
19 I'm sorry, you have concluded your inquiry?

20 MR. VOLINSKY: Yes.

21 THE PRESIDING OFFICER: Okay. There
22 have been discussion among counsel at the informal
23 conference that certain attorneys would be

1 question -- or lead the questioning, and so I'll
2 ask for which order on this witness the
3 respondents wish to proceed.

4 MR. SATURLEY: I believe that I will be
5 first.

6 THE PRESIDING OFFICER: Okay,
7 Mr. Saturley. Take a moment, get comfortable. As
8 you know, we have a riser for that podium, if you
9 prefer. You're all set?

10 MR. SATURLEY: I think so. I think
11 it's close enough. Thank you.

12 THE PRESIDING OFFICER: Go right ahead,
13 sir.

14 MR. SATURLEY: Thank you.

15 CROSS-EXAMINATION

16 BY MR. SATURLEY:

17 Q. Good morning, Mr. Coutu. My name is
18 William Saturley; in this matter I represent the
19 Local Government Center. I'd like to start the
20 topics for cross-examination with one you brought
21 up yesterday, and that was the rates that the town
22 of Northampton paid for health insurance while you
23 were working as part of the negotiation committee.

1 Do you remember your testimony on that topic?

2 A. I do.

3 Q. And do you remember testifying that you
4 were on that committee for, I believe, five years,
5 engaged in that process?

6 A. I said approximately.

7 Q. Approximately five years, okay. Now,
8 you only mentioned that -- the increases for two
9 out of the those five years, is that right, do you
10 recall your testimony?

11 A. I do.

12 Q. And you didn't talk about the other
13 three years in which -- during which you were
14 engaged in that process. Do you remember the
15 increases for those three years?

16 A. I do not.

17 Q. Would you agree with me that in order
18 to understand the significance of the rate
19 increases that you brought to our attention, one
20 should probably consider the increases of the
21 other years that you did not mention. Would you
22 agree with me that that's fair context in order to
23 understand the significance of the increases?

1 A. May I ask a question?

2 Q. Could you answer my question first.

3 A. I don't agree with you.

4 Q. Okay. And so would you agree with me
5 that when you made a significance of the 27
6 percent increase in one year, are you saying that
7 if the prior year it had been a 50 percent
8 increase, and the year before that it had been a
9 50 percent increase, indeed one might have thought
10 that the 27 percent increase was actually pretty
11 good. Would you agree with that?

12 A. Given your example.

13 Q. So would you agree with me that if the
14 prior years' increases were de minimis or, indeed,
15 reductions in the rate of health insurance that
16 the town of Northampton was quoted by HealthTrust,
17 that that would be significant?

18 A. Again, I don't -- I don't agree.

19 Q. Again, do you recall the numbers that
20 HealthTrust charged Northampton and the increases
21 that were quoted to Northampton for the years
22 2007, 2008, 2009, all years prior to the -- to the
23 years that you've described?

1 A. I don't recall the amounts. I know
2 that they were significantly less.

3 Q. Significantly less. Indeed, for 2007
4 the actual rate that was charged Northampton over
5 2006 was actually a decrease of 5.1 percent, do
6 you recall that?

7 A. I do not.

8 Q. Do you recall that for the year 2008
9 the increase in health rates that Northampton paid
10 was actually only an increase of .4 percent?

11 A. Other than my testimony that I recalled
12 that they were significantly less, I don't recall
13 the specific numbers.

14 Q. Do you recall specifically that in the
15 year 2009 the percent of change for the
16 HealthTrust rates charged to Northampton was
17 actually a diminishment, a decrease of 1.9
18 percent?

19 A. Again, I don't recall the specific
20 numbers.

21 Q. Do you recall that for the year 2010 it
22 was a 27 percent increase, as you testified. Now,
23 are you aware that Northampton is actually part of

1 what they call an under 100 pool with regards to
2 how HealthTrust prices its product?

3 A. I do.

4 Q. And do you understand that what that
5 means is if a town is in an under 100 pool, it is
6 actually rated as a group for purposes of
7 increase, right?

8 A. That's my understanding.

9 Q. And so the rate increase is actually a
10 function of the entire group's experience, is that
11 not true?

12 A. It's collective pricing.

13 Q. It is collective pricing. And so when
14 there was a 27 percent increase, that meant that
15 the entire group, the collective pricing, all the
16 members that were part of that pricing contributed
17 to why there was a 27 percent increase for that
18 year, is that not correct?

19 A. That is my understanding. I don't have
20 any facts that are specific to be able to affirm
21 that, but that is my understanding.

22 Q. Do you remember testifying that for
23 2000 -- in the year following the 27 percent

1 increase that you talked about, you testified that
2 there was a 18.6 percent change, do you recall
3 that testimony?

4 A. I do.

5 Q. Would you -- if I were to show you the
6 chart that LGC produced with regards to town of
7 Northampton pricing, and I were to show you that
8 that percentage is actually 14.6 percent, would
9 you accept my representation that your memory was
10 wrong?

11 A. If you show it to me both the GMR and
12 the actual rate, yes.

13 Q. So what does that mean, you mean that
14 you might have been talking about the GMR with
15 regards to the 18 percent?

16 A. I may have been.

17 Q. Okay, and let's again go, what does GMR
18 mean?

19 A. Guarantee --

20 Q. Let me try. GMR is actually an early
21 estimate that LGC gives its members about pricing,
22 is it not? It comes out in around October of a
23 year?

1 A. Right.

2 Q. And they give a rate in October for a
3 pool and a period that's actually not even going
4 to begin until the following July, is that right?
5 Is that your understanding?

6 A. That's my understanding.

7 Q. And then they go back again -- prior to
8 the July pool actually starting they go back in
9 like April, more or less, to say, okay, we gave
10 you an early estimate, and now we're giving you a
11 better estimate. Isn't that the process that you
12 understand LGC to go through?

13 A. I think it's essentially how it works.

14 Q. Essentially how it works. And the GMR
15 means that early window, that early budget number,
16 that's what they're considering to be their
17 guaranteed maximum rate not to exceed, isn't that
18 right?

19 A. Correct.

20 Q. So when they go back the following
21 April, even before the period has yet started, now
22 they're going back and saying, okay, we had a
23 guaranteed rate, but now we have a lesser rate,

1 potentially, right?

2 A. Potentially.

3 Q. Never gets any higher?

4 A. Correct.

5 Q. So when you said that the rate increase
6 was 18.6 percent, you may have been talking about
7 the GMR rate, the first rate that was quoted,
8 right?

9 A. I may have been.

10 Q. And the GMR is not necessarily what a
11 town actually pays, is it?

12 A. Correct.

13 Q. And so if the GMR for the year you
14 remembered was 18.6 but the actual rate was 14.6,
15 then your testimony about the rate of increase was
16 overstated, was it not?

17 A. If the facts are that the GMR was the
18 18 and the actual was 14, then I would agree.

19 Q. And do you know the percent of change
20 for the year 2012 with regards to the town of
21 Northampton?

22 A. I do not.

23 Q. So you're not aware that the percentage

1 increase for 2012 for the town of Northampton,
2 again, is a negative number, 4.9 percent, again,
3 you're not aware of that?

4 A. I am not.

5 Q. Would you agree with me that those
6 numbers put some perspective on the numbers that
7 you highlighted, and they demonstrate that overall
8 for the past six years the town of Northampton has
9 actually done much better than you suggested with
10 regards to its rates from HealthTrust?

11 A. If you were to take the -- let's call
12 it five years, I'm not sure just how many years
13 your statement speaks to -- and considered the
14 increases or the nonincreases each year, then take
15 it as a whole, I think it's a fair comment to say
16 that in context all of the prior increases or
17 nonincreases could be considered or should be
18 considered.

19 Q. It's interesting to use that word
20 context. Much testimony comes with a better
21 understanding when we place it in context, doesn't
22 it?

23 A. Sometimes.

1 Q. You mentioned that you went to the
2 LGC's selectmen's institute, or I forget exactly
3 the title that you called it and I forget the
4 title myself, but you testified about that
5 yesterday, right?

6 A. Correct.

7 Q. And you testified that you volunteered
8 some materials for the other selectmen to look at,
9 and maybe that -- you were suggesting that LGC
10 should be publishing and disseminating this
11 material that you'd written, am I correct?

12 A. Correct.

13 Q. And I think you said that LGC did not
14 take you up on your offer, is that right?

15 A. I think I said that I gave the material
16 to Jack Calhoon, I believe was the coordinator of
17 the select institute program, and he made it
18 available to whoever was interested.

19 I also testified that I gave a copy of
20 it to Barbara Reed of LGC.

21 Q. And do you know whether LGC made it
22 broadly available?

23 A. I have not heard to that effect.

1 Q. Is it possible that during that time
2 while you were participating in the selectmen's
3 institute -- and I'll call it that because I don't
4 know the actual title, right -- is it a one-day or
5 a two-day workshop?

6 A. No, I think it's four days.

7 Q. Four days. So it's a multiple-day
8 workshop?

9 A. Right.

10 Q. Which you attend with other select
11 people?

12 A. Typically newly elected.

13 Q. And so you were interacting with other
14 people during the institute?

15 A. Right.

16 Q. Did you at any time during those four
17 days express your opinion with regards to the
18 required skills and the type of skills and the
19 level of skills that in your opinion select people
20 have with regards to towns?

21 A. I don't recall that I did.

22 Q. I'm sorry?

23 A. I don't recall that I did.

1 Q. You don't recall. You have expressed
2 an opinion in other contexts that the skills of
3 select people, at least with regards to the town
4 of Northampton, are, frankly, awful, is that
5 correct?

6 A. Correct.

7 Q. And you have also expressed the opinion
8 that the skills necessary to fully and properly
9 discharge their duties, that they do not have the
10 required skills. Have you expressed that opinion
11 before?

12 A. That is my judgment.

13 Q. Do you have that same feeling about the
14 appointed officials in the town of Northampton?

15 A. I can't make a universal statement with
16 respect to all officials, now serving or previously
17 serving when I did.

18 Q. Do you have that same opinion with
19 regards to selectmen of other municipalities with
20 whom, for instance, you interacted with at the
21 selectmen's institute, that their skills are,
22 frankly, awful?

23 A. Again, I would not have had enough

1 opportunity to be able to make a judgment as to the
2 skills of any other selectboard members at the
3 institute or otherwise.

4 Q. Am I correct that you have expressed an
5 opinion that the accounting department in the town
6 of Northampton was completely dysfunctional --
7 completely dysfunctional when you took office?

8 A. It wasn't working.

9 Q. But aren't those your words from your
10 deposition?

11 A. I don't remember.

12 Q. Am I correct that you have expressed an
13 opinion that the investor policy -- investment
14 policy for the town was a cobbled together
15 document?

16 A. Correct.

17 Q. Was it your opinion that the bankers
18 you interviewed as part of the process you
19 described yesterday, that their lack of knowledge
20 was spectacularly stunning, that was your opinion?
21 Those were your words, am I correct?

22 A. They are my words.

23 Q. Is it your opinion that the members of

1 the board of LGC, many of whom are municipal
2 officials, some of whom are selectmen, some of
3 whom are city councilors, and some of whom are
4 mayors, that their ability and their level of
5 talent is, frankly, awful?

6 A. I have no opinion on the board members.

7 Q. You testified yesterday that you met
8 briefly -- or I think briefly -- two and a half
9 hours I think was your testimony, with two
10 gentlemen, Steve Fournier and Dave Caron?

11 A. Correct.

12 Q. Is that correct? And you testified
13 that that meeting took place in October, on
14 October 5th, specifically, of 2011, am I correct
15 about the date?

16 A. I don't recall the date specifically,
17 but you did raise my attention to an earlier point,
18 and I do confirm it occurred on or about October
19 5th of 2011.

20 Q. Of 2011. Now, you know that the
21 petition in this matter has a date of early
22 September 2011, does it not?

23 A. I know it now.

1 Q. And, indeed, by August of 2011, that
2 would be two months earlier than your meeting, you
3 had already started communicating with the Bureau
4 of Securities Regulation on the topic of LGC, had
5 you not?

6 A. I did.

7 Q. You had actually by that time -- by the
8 time you were communicating with the bureau, you
9 had read the bureau's August 2011 report, am I
10 correct?

11 A. I did.

12 Q. You told Mr. Wingate -- Mr. Wingate is
13 sitting at that table, correct?

14 A. He is.

15 Q. Now, you told Mr. Wingate that you
16 would volunteer your assistance to the bureau with
17 regards to the LGC matter, did you not?

18 A. I don't know if those were the precise
19 words, but that was the effect of the offer.

20 Q. You talked about the exchange you had
21 with Mr. Wingate during your deposition, didn't
22 we? Do you recall?

23 A. Yes.

1 Q. Do you recall that in your
2 correspondence that you told Mr. Wingate -- I'm
3 curious about the words you used -- count on my
4 assistance. Do you recall using that phrase?

5 A. I don't recall the precise phraseology
6 that I used, but the genesis of my comments to
7 Mr. Wingate is that I would assist you if I could
8 be of help.

9 Q. Well, I think the specific words are
10 important to me, so if I were to put in front of
11 you a copy of the e-mail exchange between you and
12 Mr. Wingate, would that help refresh your
13 recollection as to the words that you used?

14 A. It would.

15 MR. SATURLEY: Your Honor, may I do
16 that? Thank you. Your Honor, Mr. Mitchell. May
17 I approach?

18 THE PRESIDING OFFICER: Certainly.

19 MR. SATURLEY: Would you like a copy to
20 follow along?

21 MR. VOLINSKY: This is not an exhibit.

22 MR. SATURLEY: This is not an exhibit.
23 It is to refresh his recollection.

1 MR. VOLINSKY: Then it shouldn't go,
2 respectfully --

3 MR. SATURLEY: I'll pull it back.

4 MR. GORDON: Can I ask a clarification?

5 THE PRESIDING OFFICER: Let me deal
6 with one thing at a time, please. Mr. Saturley is
7 going to pull --

8 MR. SATURLEY: Pull it back for the
9 moment.

10 THE PRESIDING OFFICER: Hand it off
11 momentarily, at least.

12 MR. SATURLEY: Let's deal with the --

13 THE PRESIDING OFFICER: He is asking
14 questions, and you are raising for what purpose,
15 sir?

16 MR. GORDON: I was just asking for
17 clarification of process, because Mr. Volinsky
18 said it wasn't an exhibit, and I thought that the
19 order that you had and the statement that you had
20 is that cross-examination documents to be used on
21 cross-examination did not have to be included in
22 the exhibits because we didn't know what would be
23 used as part of cross-examination.

1 THE PRESIDING OFFICER: I believe it
2 was documents to be used for impeachment was my
3 order. That's the clarification.

4 MR. GORDON: Did not need to be
5 disclosed, right?

6 THE PRESIDING OFFICER: Correct. I
7 don't believe we're at impeachment just yet, but
8 we're still doing something here. Mr. Saturley,
9 you have the floor.

10 MR. SATURLEY: Thank you.

11 BY MR. SATURLEY:

12 Q. You had an e-mail exchange with the
13 bureau on August 18, 2011, correct?

14 A. That is correct.

15 Q. And it was addressed to Mr. Wingate,
16 and you are responding to an e-mail back to you
17 from Mr. Wingate, is that correct?

18 A. Correct.

19 Q. And in your response to Mr. Wingate you
20 say, Earl, you're welcome, count on my assistance.
21 Is that correct?

22 A. That is correct.

23 Q. I think it would be beneficial for the

1 two of us to collaborate as you pull together your
2 case for a hearing. Was that your offer to the
3 bureau?

4 A. It is. Or was, excuse me.

5 Q. And that's well before you met with
6 Mr. Caron and Mr. Fournier, am I correct?

7 A. That is correct.

8 Q. Now, do you know why the actual e-mail
9 from Mr. Wingate to you is blacked out, redacted,
10 as we say?

11 A. I don't have a clue.

12 Q. Do you have any idea whether or not the
13 bureau has ever identified you as an expert
14 witness? Do you know when they first identified
15 you as an expert witness?

16 A. I know when there was the initial
17 contact on behalf of the bureau to pursue the
18 possibility of my becoming involved in this case.

19 Q. Do you know that the bureau actually --
20 when was that date?

21 A. I believe it was the third week of
22 January 2012.

23 Q. Okay. Well, do you know with regards

1 to a pleading that the bureau has filed in this
2 case in December of 2011, that the bureau had
3 specifically identified you as somebody that they
4 consider their communications with you to be work
5 product, do you know that?

6 A. I do not.

7 Q. Do you know what work product means in
8 this context?

9 A. I do.

10 Q. Let's go back to the meeting. At the
11 time you sat down with Mr. Fournier and Mr. Caron,
12 well after the date on which you offered to
13 collaborate with the bureau, did you disclose to
14 them that you had sent analyses and reports and
15 criticisms of the LGC to the bureau?

16 A. I don't recall that I disclosed that I
17 had had contact with the bureau. I did share with
18 them the exact work product that I had shared with
19 Mr. Wingate.

20 Q. I want to make sure, you don't recall,
21 or you don't believe that you did, which is the
22 answer that you gave me at your deposition.

23 A. I don't -- I don't believe that I did.

1 I don't have a recollection that I did.

2 Q. Okay. And so let me just repeat.
3 Mr. Fournier and Mr. Caron are both board members
4 of LGC, right?

5 A. I -- I know Mr. Fournier is. Mr. Caron
6 represented that he is.

7 Q. Did you disclose to them when you met
8 with them that you had offered the bureau in any
9 way that it deemed appropriate or beneficial?

10 A. No less than I disclosed to Mr. Wingate
11 that I had offered many times to help LGC.

12 Q. I'd like you to answer my question.
13 Did you disclose to them that you had offered to
14 help the bureau in any way that it deemed
15 appropriate or beneficial?

16 A. I did not.

17 Q. Do you think that they would have liked
18 to have known when they sat down with you and
19 talked with you about HealthTrust that you had
20 made that offer to the bureau?

21 A. I could only speculate what their
22 response might be.

23 Q. Excuse me, were you asked that at your

1 deposition, that same question?

2 A. I don't recall. I was asked so many
3 things over ten hours.

4 Q. Don't you think it would have been a
5 point of knowledge that Mr. Caron and Mr. Fournier
6 would have liked to have known, sitting members of
7 LGC, when they sat down with you to know that you
8 had already offered to assist the bureau in any
9 way it found to be appropriate or beneficial, and,
10 indeed, you were already exchanging communications
11 with the bureau on the topic of LGC. Don't you
12 think they would have liked to have known that?

13 A. Probably it was a relevant fact.

14 Q. I'm sorry, probably --

15 A. Is a relevant fact.

16 Q. They would have liked to have known it,
17 correct?

18 A. Yes.

19 Q. It wouldn't have been hard to tell them
20 that, would it have been?

21 A. Mechanically, no.

22 Q. It might have affected how they
23 communicated with you, do you think?

1 A. I don't know.

2 Q. Do you have any opinion? Are you
3 willing to offer me an opinion on whether they
4 might have thought about that meeting just a
5 little bit differently?

6 A. My -- I would only venture to guess
7 that had they been informed that I had a prior
8 discussion by e-mail with Mr. Wingate, that that
9 would have been either a point of contention for
10 them or certainly a point of relevance.

11 Q. But you never gave them the choice,
12 right? Right?

13 A. I didn't disclose it.

14 Q. While we're looking at that e-mail, in
15 your communications with the bureau, have you ever
16 suggested that there is -- that the requirements
17 of Chapter 5B itself are -- that it is poorly
18 written?

19 A. In the interest of time, you could
20 point me to the specific paragraph.

21 Q. Page 5 of your e-mail.

22 A. Page 5. Okay.

23 Q. First paragraph.

1 A. I have stated in this email that it is
2 poorly written. Poorly written requirements of
3 Chapter 5.

4 Q. And that you went on to say that the
5 poorly written requirements of Chapter 5B clearly
6 have contributed to certain of the issues
7 identified in the report. And by report I assume
8 you mean the report that was released in August?

9 A. That is correct.

10 Q. And at your deposition were you asked
11 do you still believe that the requirements of
12 Chapter 5B are poorly written?

13 A. I do agree that they create a number of
14 ambiguities.

15 MR. SATURLEY: Your Honor, at this
16 point I'm going to move to have this marked and
17 accepted. It's Mr. Coutu's communication with the
18 bureau, you've accepted that it is that, and he's
19 testified as to some of its content.

20 MR. VOLINSKY: Can I have just one
21 second?

22 THE PRESIDING OFFICER: Okay, sure.
23 What is the date on that letter, Mr. Saturley?

1 MR. SATURLEY: August 18.

2 THE PRESIDING OFFICER: Thank you.

3 MR. SATURLEY: Is the top e-mail. It
4 is what they call an e-mail string, so that later
5 on some of the e-mails are August 17th, but the
6 top line is Thursday, August 18th.

7 THE PRESIDING OFFICER: Are you moving
8 for the stream?

9 MR. SATURLEY: I'm moving for the
10 stream, since the questions that I've just
11 asked -- I'm moving for the whole exhibit.

12 THE PRESIDING OFFICER: Mr. Volinsky,
13 could you come closer to the microphone, please?

14 MR. VOLINSKY: Sorry. Let me do this.
15 In the interest of time, I'm not going to object
16 to the admission to this -- of this document.

17 THE PRESIDING OFFICER: All right, very
18 good. Mr. Saturley, do you have a proposed number
19 for this?

20 MR. SATURLEY: It will be LGC 456.

21 THE PRESIDING OFFICER: Did you say
22 4-5-6 as in 456?

23 MR. SATURLEY: I did, sir.

1 THE PRESIDING OFFICER: Thank you.

2 MR. VOLINSKY: May I ask?

3 THE PRESIDING OFFICER: Mr. Volinsky.

4 MR. VOLINSKY: This obviously isn't
5 being used to impeach, I'm not objecting, but if
6 there are going to be other documents that aren't
7 currently part of the 456 that are going to get
8 pulled out and used as regular cross-examination,
9 I would just ask for a copy so I don't have to
10 break in and try and read things as I'm listening.

11 THE PRESIDING OFFICER: Understood. Do
12 you understand his request, Mr. Saturley? If you
13 intend to use exhibits which have not yet been
14 exchanged, that you give the BSR some advance
15 notice just to help our proceedings move along.

16 MR. SATURLEY: Happy to do so.

17 THE PRESIDING OFFICER: Thank you.

18 (LGC 456 was marked and entered into evidence.)

19 THE PRESIDING OFFICER: I might just
20 take this opportunity to make a general statement
21 to counsel. Because of the number of exhibits and
22 the number of pages in some of the exhibits, the
23 copying function, it becomes truly a crucial one.

1 And so if I might trust you all that if
2 you are going to bring exhibits forward that we
3 don't have ahead of time, if you just might make a
4 double review to make sure that we have all pages.

5 And that's not, if you will, holding
6 anyone in any disfavor, it's just we've known from
7 earlier proceedings here that sometimes a 28-page
8 document is lacking page 22 or 21, not by any
9 malfeasance, but just in terms of the pressures of
10 time. Thank you.

11 MR. SATURLEY: Yes.

12 THE PRESIDING OFFICER: Mr. Saturley,
13 continue.

14 MR. SATURLEY: Again, a mechanical
15 question.

16 THE PRESIDING OFFICER: Yes.

17 MR. SATURLEY: I'd like to bring a
18 folder -- I presume what you'd like me to do is
19 bring a folder and make additional copies and add
20 it to the exhibits that have already been
21 submitted to you, later on.

22 THE PRESIDING OFFICER: That would be
23 fine, as long as we keep it there.

1 MR. SATURLEY: That's fine. I will
2 take responsibility to do that.

3 BY MR. SATURLEY:

4 Q. Mr. Coutu, I'd like to talk about your
5 background a little bit. Since we spent quite a
6 bit of time on it yesterday, I'll try to be brief,
7 but I do have some questions.

8 My understanding is that the majority
9 of your work has either been in bankruptcy work or
10 running troubled insurance companies, is that
11 correct?

12 A. Half of my career was as a banker, and
13 the other half was troubled companies, bankruptcy
14 and the like.

15 Q. Is it safe to say that for several
16 years your focus has been on the development of a
17 runoff management, in the nature of workouts and
18 runoffs?

19 A. Since '92.

20 Q. So, indeed, I think you've even
21 described yourself as being known in the industry
22 as a runoff guy, is that right?

23 A. Correct.

1 Q. Now, I want to make sure I understand
2 what you testified to yesterday. That with
3 regards to a runoff situation, that the principal
4 concerns, indeed the two concerns that you
5 identified for a company in runoff is to pay
6 claims, No. 1, and, No. 2, maintain sufficient
7 capital to avoid regulatory action. Was that your
8 testimony yesterday?

9 A. I think I said to maintain sufficient
10 liquidity, meaning cash, to discharge eligible
11 claims, and maintain sufficient surplus to avoid
12 insolvency.

13 Q. So you're sort of breaking that down
14 into two buckets, am I correct?

15 A. Correct.

16 Q. The first bucket is to maintain
17 sufficient liquidity to pay the claims that are
18 anticipated to come to it, right?

19 A. That's correct.

20 Q. And in a company in runoff, those
21 claims are basically pretty much known,
22 ascertainable, right?

23 A. Not at all.

1 Q. Well, you're not writing new business,
2 generally speaking, is that right?

3 A. No, that's not correct either.

4 Q. A runoff company, first of all, am I
5 correct, typically will discontinue any continuing
6 underwriting functions other than as may be
7 mandated by contract?

8 A. That is correct.

9 Q. Is that a true statement?

10 A. It is.

11 Q. So you're not out there writing new --
12 looking for new business, signing up new accounts,
13 is that right?

14 A. It's just fulfilling contractual
15 obligations to provide continuing coverage as
16 contractually agreed to.

17 Q. So to the extent that some company goes
18 into runoff in the middle of a period for which
19 it's insured, it may still incur those claims, but
20 it's not out there writing new policies, right?

21 A. Outside of the contractual
22 requirements, you're correct.

23 Q. And so, again, back to the two buckets.

1 You need to maintain sufficient liquidity to pay
2 the claims, and then you talked about there's
3 another bucket, which is capital?

4 A. Fair word.

5 Q. Okay. And the capital needs to be an
6 amount that avoids regulatory intervention?

7 A. Correct.

8 Q. That's what you said, right?

9 A. Correct.

10 Q. And so with regards to the RBC topics
11 that you keep talking about that are promulgated
12 by the NAIC, and adopted in the 50 states, all of
13 which you said twice, that would mean to avoid
14 regulatory intervention of any kind, you just need
15 to be above 2.0?

16 A. Incorrect.

17 Q. I'm sorry?

18 A. Incorrect.

19 Q. Incorrect. Tell me what you testified
20 to, then.

21 A. I believe I testified that mandatory
22 intervention occurs when an RBC falls below 70
23 percent or in decimal notation .7.

1 Q. That's the mandatory intervention,
2 right?

3 A. I also testified that between 70
4 percent and a 100 percent, a regulator has the
5 option to intervene, but not the obligation. And I
6 believe I testified that in my experience that is
7 not exercised with any frequency.

8 Q. Very often, right? And so the 1 to
9 2 -- the 2 is where you might have to start filing
10 reports with the regulators, is that right?

11 A. Yes. Runoff is a special situation,
12 but to answer your question, if a company that's an
13 underwriting -- containment underwriting operation
14 falls below 200 percent, it must file a document
15 with the domicile -- domiciliary regulator of what
16 steps are to be taken to restore RBC to 200 percent
17 or more.

18 Q. That's an actively underwriting
19 company, correct?

20 A. Correct.

21 Q. A company in runoff might even -- need
22 less capital than that?

23 A. Technically a company if it's in runoff

1 falls below 200 percent, then are relieved
2 restoring capital back to that level. But
3 typically what happens is that the regulators will
4 ask for a runoff plan that can demonstrate two
5 things, sufficient liquidity, and solvency. And if
6 the regulator accepts that runoff plan, it is more
7 likely than not the RBC levels will be below 200
8 percent.

9 Q. And so I guess the point that we should
10 understand is that there's a very different
11 consideration given to RBC levels for runoff
12 companies than there are for actively underwriting
13 companies, am I correct?

14 A. I think I would say that on an
15 exception basis, companies in runoff are less --
16 are held to a less high standard than companies in
17 underwriting.

18 Q. And would you agree with me that the
19 skills needed to perform runoff services, winding
20 down an insurance company's operations over an
21 extended period of time, are different than those
22 that are necessary to general underwriting and
23 service new business, correct?

1 A. I -- I don't think I would agree with
2 that, counselor.

3 Q. You wouldn't agree with that?

4 A. Not a hundred percent, no.

5 Q. Were you asked that at your deposition?

6 A. I may have. Again, I was asked so many
7 questions.

8 Q. Let me just ask you -- see if you can
9 remember this part. See if you remember a
10 question. Would you agree that the skills needed
11 to perform the runoff services, winding down on
12 insurance company's operations over an extended
13 period of time, are different from those that are
14 necessary to generate, underwrite and service new
15 business, correct? And your answer was?

16 MR. VOLINSKY: Page number?

17 MR. SATURLEY: 19 and 20, I'm sorry.

18 BY MR. SATURLEY:

19 Q. Do you recall the question?

20 A. Yes, but the way you've read that back,
21 the caveat is that you -- the question is being
22 raised in contrast to what's needed to generate and
23 underwrite new business. If that's the same

1 context, the answer is the skills are different.

2 Q. The skills are different. So your
3 answer was, I would. That's your answer, right?

4 A. I think I just said that.

5 Q. Would you agree with me that most
6 people in life tend to select a focus that's
7 oriented around a particular skill set they might
8 have, and if you acknowledge that there are
9 different skill sets, you became a runoff guy,
10 right?

11 A. Half my career was dedicated to running
12 troubled companies, which includes runoffs and
13 other things that are in the workout area.

14 Q. As opposed to running an active -- as
15 opposed to generating, underwriting and servicing
16 new business?

17 A. Correct.

18 Q. Different skill set, right?

19 A. Correct.

20 Q. And you -- are you like the rest of us
21 in that you tend to have one skill set and not
22 necessarily both of those skill sets, or are
23 you -- do you have both skill sets?

1 A. I believe I testified in my deposition
2 that during the years which I managed runoffs, I
3 also had responsibility for the underwriting
4 operations of a company by the name of Coregis.

5 Q. You had responsibility but other people
6 were doing that work, correct?

7 A. I was the senior officer overseeing.

8 Q. Is HealthTrust in distress, as you used
9 the word during your deposition and during some of
10 the testimony today? Is it in runoff?

11 A. It's not in runoff.

12 Q. You've spent 26 years in property and
13 casualty insurance, is that right?

14 A. Roughly, from '84 forward.

15 Q. It's not the years I'm interested in,
16 it's the line. Your work in the insurance field
17 has been in property and casualty insurance, is it
18 not?

19 A. The lion's share of it has been.

20 Q. All the mentions that you've made of
21 your contact with regulators yesterday, were any
22 of those risk -- municipal risk pool regulators,
23 or were they insurance company regulators?

1 A. They were insurance company regulators.

2 Q. Am I to understand that you have had no
3 career involvements with any health insurer, is
4 that correct?

5 A. Other -- other than as an acquirer or
6 purchaser of healthcare services which were part
7 and parcel of running a company, no.

8 Q. So I am correct that you've had no
9 career involvement with any health insurer, is
10 that correct?

11 A. Not in managing a healthcare carrier, I
12 do not.

13 Q. Do you know the precise methodology
14 that is used for reserving or determining the
15 HealthTrust loss reserves?

16 A. I know what the reserves pretend to
17 cover, I don't know the actuarial method that the
18 outside consulting actuary uses of a number of
19 different choices available to selection by an
20 actuary.

21 Q. So I'm trying to reduce that to an
22 answer.

23 MR. VOLINSKY: Move to strike.

1 THE PRESIDING OFFICER: One moment,
2 please. Strike Mr. Saturley's comment. And
3 please proceed, sir.

4 BY MR. SATURLEY:

5 Q. Am I correct that you do not know the
6 precise methodology that is used to determine loss
7 reserves for HealthTrust or an insurer like
8 HealthTrust? Yes or no.

9 A. I'm aware of the methodology used by
10 the healthcare industry. I do not know the
11 methodology used by HealthTrust.

12 Q. Am I correct that you do not know with
13 regards to the health industry the rate of
14 accuracy with which actuaries predict levels of
15 claims?

16 A. Are we talking about claims or
17 reserves?

18 Q. With regards to actuaries making
19 predictions to the amount of claims that are going
20 to need to be paid in any particular year, would
21 you agree with me that you do not know the level
22 of accuracy that applies in the health insurance
23 field?

1 A. I'm not sure that I fully understand
2 the question. If -- if you're asking me to make a
3 mathematical comment on the reserves -- the
4 integrity of reverses or claims paid.

5 Q. I'm sorry, the last part was what?

6 A. I'm not sure if you're asking me to
7 make a mathematical statement on the accuracy of
8 claims reserving or claims paid.

9 Q. I'm asking you about a discussion that
10 we had during your deposition; it's very simple.
11 Did you agree with me then that insurers who use
12 good actuaries --

13 MR. SATURLEY: 193, Andy.

14 BY MR. SATURLEY:

15 Q. Insurers who use good actuaries,
16 sometimes the actuaries miss their predictions
17 with regards to the amount of claims they are
18 going to be paid in any particular year?

19 A. As you have now stated, I agree with
20 the terms -- or the words.

21 Q. And I believe you testified that it
22 happens with some frequency in the property and
23 casualty business, that was your answer. Do you

1 recall that?

2 A. I generally recall it.

3 Q. And you agreed with it. And then I
4 went on and asked you, do you have similar
5 knowledge with regards to the health insurance
6 business. And do you recall your answer then?

7 A. I don't, but my guess is that the
8 actuarial practices results --

9 Q. Wait a minute. My answer (verbatim)
10 was do you remember?

11 A. I don't remember.

12 Q. Okay. If I were to refresh your
13 recollection and suggest that your answer then was
14 I don't know, would you accept my representation
15 that was your answer at the time?

16 A. I would.

17 Q. Still your answer today, you don't
18 know?

19 A. I do not know the healthcare actuary
20 results.

21 Q. And, indeed, you said -- we went on to
22 discuss on 187 that with regards to the claims
23 reserves specifically on the HealthTrust balance

1 sheet, you said you were unfamiliar with how they
2 set it, is that right?

3 A. I believe I said I'm unfamiliar with
4 how the HealthTrust sets it.

5 Q. You made quite a big deal of the length
6 of time with regards to HealthTrust investments,
7 the period of time?

8 A. Duration.

9 Q. Duration. You made a chart about it.
10 Is there any connection -- let me start again.
11 Strike that, please.

12 I'm back to the two buckets we talked
13 about earlier. Is that also true, the two buckets
14 we talked about, paying claims and then having
15 capital, that applies to HealthTrust as well, even
16 though it's not in runoff, right? The same
17 analysis, you would concede it's the same analysis
18 applies?

19 A. It's the two most critical pieces.
20 There are obviously other elements.

21 Q. Of course. But with regards to claims
22 then you would argue that the way in which
23 premiums are invested needs to match the predicted

1 duration of the claim period, have I stated that
2 more or less accurately?

3 A. Claims manifestation period.

4 Q. Claims manifestation period. The
5 premiums that come in during a policy period need
6 to be invested in a way that matches the
7 anticipated claims manifestation, right?

8 A. Right.

9 Q. So if you expect that claims are to be
10 paid in a 12-month period, then you think that the
11 assets should be invested accordingly, have I got
12 that right?

13 A. It's conceptually correct.

14 Q. But then there's another bucket, right?

15 A. Of surplus?

16 Q. Capital. Surplus, capital. Shock
17 absorber I think is the word you've used in the
18 past, right?

19 A. Right.

20 Q. That has nothing to do with the claims
21 period and the premium to cover the claims, right?
22 Shock absorber is different; capital is different
23 than the money that's used to pay claims?

1 A. That is correct.

2 Q. Okay. And is there -- with regards to
3 that shock absorber amount, is there any
4 requirement that it similarly needs to be invested
5 in short-term investments, or, contrarywise, would
6 the board of directors, say, of HealthTrust, have
7 discretion to determine how they invested money
8 that they had reserved for capital?

9 MR. VOLINSKY: May I pose an objection?
10 First the compound, we can do one.

11 THE PRESIDING OFFICER: Understood.
12 Let's do the compound one. He can split it up.
13 Mr. Saturley, would you kindly split that question
14 up.

15 MR. SATURLEY: Certainly.

16 THE PRESIDING OFFICER: Granted.

17 BY MR. SATURLEY:

18 Q. The shock absorber amount we're talking
19 about; the capital, we'll call it capital for
20 purposes of the question?

21 A. It works for me.

22 Q. It's appropriate for a HealthTrust to
23 have capital, right?

1 A. Certainly prudent.

2 Q. Certainly prudent. Permitted,
3 recommended, your opinion that they should have
4 capital?

5 A. There is no limitation that precludes
6 capital, and it would be prudent to have capital.

7 Q. I'm sorry, I couldn't hear you.

8 A. You asked me two questions. There's no
9 limitation on having capital, and, secondly, it
10 would be prudent to have capital.

11 Q. You would agree that a board of
12 directors of HealthTrust have acted prudently when
13 they have money set aside for capital?

14 A. Yes, I agree with that.

15 Q. Now, does capital, as we're using the
16 term right now, need to be invested in short-term
17 investments, the way we've talked about for the
18 premiums that go to pay claims manifestation, or
19 does the board have discretion with regards to the
20 duration of the investments?

21 THE PRESIDING OFFICER: One moment.

22 Yes?

23 MR. VOLINSKY: My objection is maybe

1 just ask for a point of clarification. Are we
2 talking about health insurers generally, or are we
3 talking about this health insurer under 5B?

4 THE PRESIDING OFFICER: What is your
5 intent.

6 MR. SATURLEY: My intent is to -- I can
7 ask it either way. I have been asking about
8 HealthTrust. He has agreed that the board of
9 directors of HealthTrust would be prudent to
10 invest in capital.

11 THE PRESIDING OFFICER: Do you have
12 your clarification?

13 MR. VOLINSKY: I'm fine.

14 THE PRESIDING OFFICER: Okay, please
15 proceed, Mr. Saturley.

16 BY MR. SATURLEY:

17 Q. Shock absorber, capital. Do you have
18 my question?

19 A. I think you need to ask it again, I'm
20 not sure exactly --

21 Q. All right. The board of HealthTrust,
22 you'd agreed, is prudent and -- you'd agree that
23 it's prudent that they have capital on their

1 books, right?

2 A. Correct.

3 Q. Is there some requirement that that
4 capital be invested in short-term investments like
5 you have said that the premiums should be? Is
6 there some requirement?

7 A. Again, to the extent of the
8 liabilities, it is prudent that the operating
9 capital be invested in matched to liabilities.

10 Q. And with regards to capital, does the
11 board of directors, or anyone, have a specific
12 understanding of what the liabilities are, or is
13 it a shock absorber to be there for unanticipated
14 liabilities are?

15 A. To the first part of your question, do
16 the boards have the knowledge with respect to
17 liabilities, I don't know. I mean, I don't want to
18 speculate on that.

19 As to shock absorber -- if you would,
20 because I got distracted. If you could repeat the
21 second half of that question, I'd appreciate it.

22 Q. Let's try again. Would you agree with
23 me that the nature of capital adequacy is not

1 dictated by duration or investments, do you agree
2 with that statement?

3 A. I do.

4 Q. Would you agree with me that there
5 isn't a linkage -- there is no linkage necessary
6 between the amount and the investment in capital,
7 whether it's got to be invested in securities of
8 some specific duration, would you agree with that
9 statement?

10 A. As relates to the capital piece, yes.

11 Q. With regards to the capital, you would
12 agree with that statement? There's no reason to
13 do that, to make that linkage?

14 A. As it relates to capital. I'm only
15 speaking to capital.

16 Q. Right. The investment period that
17 you've talked about is driven by the liquidity
18 needs of the organization, not by the capital
19 needs. Fair statement?

20 A. No.

21 Q. Would you like to turn to page 132?
22 Let me try again. The investment period is driven
23 by the liquidity needs of the organization, not by

1 the capital needs. That's an incorrect statement?

2 A. The investment period piggybacks to the
3 cash liquidities of the organization. So I agree
4 with that part. You went on to say something about
5 capital.

6 Q. The investment period is not driven by
7 the capital needs?

8 A. The investment period is not driven by
9 the capital. I would agree with that statement.

10 Q. There is no connection between
11 investment duration and capital adequacy, true
12 statement?

13 A. Capital adequacy, I agree.

14 Q. Would you agree with me that the
15 actuary who sat through the board meeting with
16 regards to HealthTrust setting its capital amounts
17 would have a better sense of why the board chose
18 the targets that it did than you?

19 A. I have -- I do not know the basis of
20 how that target was selected, so I do not have an
21 opinion.

22 Q. And with regards to the minutes that
23 you told us you reviewed, my understanding is you

1 reviewed one set of minutes. Is that your
2 correction from earlier today, that's the piece of
3 deposition testimony we saw, one set of minutes?

4 A. No, that's not correct. The deposition
5 response said key and critical minutes.

6 Q. Key and critical minutes, okay. Were
7 there any minutes to be found in your file when we
8 took your deposition?

9 A. I don't believe -- I don't know for
10 sure, but I don't believe that the minutes were in
11 my binder.

12 Q. I want to make sure I understand the
13 capital piece before we move on. Do I understand
14 that the board of directors of HealthTrust --
15 would you agree with me, the board of directors of
16 HealthTrust is empowered and authorized to have an
17 amount available to them to establish capital
18 adequacy for their fund?

19 A. As a board, that I assume would be the
20 prerogative of the board.

21 Q. And that the amount that they devoted
22 to capital adequacy should not be thought of as
23 being used to pay the claims that arise during

1 this manifestation period. They're separate, am I
2 correct?

3 A. May I repeat the question? I want to
4 make sure I understand the question clearly. The
5 question is, I believe, that capital is not used to
6 pay claims.

7 Q. Is that right?

8 A. That's correct.

9 Q. Capital amount is to protect, for
10 instance, against unexpected business risks, risks
11 that have not been predicted by the actuary and so
12 forth, is that right?

13 A. I don't agree with that.

14 Q. Would you agree with me that the amount
15 that is set aside for capital is to protect for
16 reasons -- you used the word shock absorber,
17 right? And that the shock absorber is against
18 unexpected business risks?

19 A. Capital provides for that particular
20 exposure, but it provides for other things as well.

21 Q. For other things as well.

22 A. Correct.

23 Q. But that's one of the things for which

1 it exists?

2 A. In the context of one of the things, I
3 do agree.

4 Q. One of the things for which you set
5 aside capital is for unexpected business risks,
6 how's that?

7 A. Agreed.

8 Q. So that means that there are other
9 things for which you need capital as well as
10 unexpected business risks, is that right?

11 A. Correct.

12 MR. SATURLEY: May I have a second to
13 consult?

14 THE PRESIDING OFFICER: Surely.
15 Consider the time as well, while you're in
16 conference.

17 MR. SATURLEY: I'm sorry?

18 THE PRESIDING OFFICER: Consider the
19 time of day while you're in conference.

20 MR. SATURLEY: How about if I go to
21 noontime, is that what you want me to do?

22 THE PRESIDING OFFICER: No, I'm just
23 saying whatever you are consulting about, also

1 consult with respect to whether you want to end
2 this phase of your examination or if you're near
3 completion. I'm just looking at the time of day.

4 MR. SATURLEY: What I may suggest,
5 Mr. Mitchell, is that I go to noon, because what
6 I'm trying to manipulate -- what I'm trying to
7 understand is what things I don't have to do.

8 THE PRESIDING OFFICER: Okay.

9 Mr. Coutu, do you need to stand or
10 stretch?

11 THE WITNESS: I'm fine, thank you.

12 (Discussion off the record.)

13 MR. SATURLEY: Mr. Mitchell, I'm
14 eliminating questions.

15 THE PRESIDING OFFICER: That's why I
16 endorse conferences, Mr. Saturley. Please
17 proceed.

18 BY MR. SATURLEY:

19 Q. We talked a minute ago about capital
20 adequacy protects against unexpected business
21 risk?

22 A. And I responded among other things.

23 Q. Among other things. So you agree that

1 there are other things that it's there for as
2 well, right?

3 A. Right.

4 Q. And yesterday when you were talking
5 about -- and teaching us about nomenclature, I
6 think one of the things you said is that capital,
7 another word that it used to be called, in this
8 industry, at least, was members' balance?

9 A. Right.

10 Q. So at least you would say members'
11 balance is the same as the way we've been using
12 capital here in the past few minutes?

13 A. I agree.

14 THE PRESIDING OFFICER: So that I don't
15 get confused, members as a generic term, or
16 members of the HealthTrust at issue here?

17 MR. SATURLEY: Would you like my
18 answer?

19 THE PRESIDING OFFICER: Yes, please.

20 MR. SATURLEY: I believe the way that
21 members' balance is used in this context, the
22 context that we're talking about, we're not
23 talking about a specific member's contract or

1 anything, we're talking about the capital that
2 exists on the financial sheet, on the financial
3 statements and is designated as members' balance.

4 That's what it was historically, and at
5 some point -- I think Mr. Coutu will correct me if
6 I'm wrong -- at some point that nomenclature
7 turned and became known essentially as net assets,
8 sometimes with some clarification.

9 THE PRESIDING OFFICER: Industrywide,
10 not on the many exhibits that come from the
11 financial reports from LGC.

12 MR. SATURLEY: I believe both. It is
13 specifically that way with HealthTrust that the
14 nomenclature turned at some point from members'
15 balance to net assets.

16 THE PRESIDING OFFICER: Thank you.

17 MR. SATURLEY: That was also as a
18 result of an industry change because of an
19 accounting standard.

20 THE PRESIDING OFFICER: Thank you.

21 MR. SATURLEY: All right?

22 THE PRESIDING OFFICER: Please proceed.

23 BY MR. SATURLEY:

1 Q. So members' balance is capital, right?

2 A. It's capital and net assets, as you
3 just explained.

4 Q. Would you agree with me that the sort
5 of -- the types of risk against which members'
6 balance would protect would include such things as
7 the statistical volatility in claims risk?

8 A. I don't know what that term means. If
9 you're talking about adverse loss development, yes.

10 Q. Adverse loss development, that's
11 another thing for which capital exists, right?

12 A. Right.

13 Q. How about catastrophic events, is that
14 something against which members' balance exists to
15 protect against?

16 A. It does.

17 Q. How about the cost of honoring that
18 GMR? If you're projecting out -- if you're
19 projecting out in October for a pool that doesn't
20 even start until the following July, and then that
21 pool runs for a year from that July, and then if
22 you get a claim towards the end of that period
23 that might run for a period of time, you could be

1 talking about a risk that you're predicting of
2 almost a three-year period, could you not?

3 A. I'm -- I'm not sure that I follow that
4 timeline.

5 Q. Would you like me to --

6 A. Maybe if we did a little scratch on the
7 paper it might be a little bit easier to understand
8 it.

9 Q. Sure.

10 MR. SATURLEY: Where is the easel?

11 MR. VOLINSKY: I gave up.

12 MR. SATURLEY: You gave up? You broke
13 it?

14 MR. RAMSDELL: I'll make it simple for
15 you. I don't want it to fall.

16 BY MR. SATURLEY:

17 Q. Let's just work with me here,
18 Mr. Coutu, if you would. You talked about the GMR
19 actually gets expressed in October of 2011. The
20 GMR is issued, right?

21 A. Okay.

22 Q. Would you agree with me? I mean you
23 can agree with that? All right.

1 Now, that GMR doesn't actually kick in
2 in the sense of become effective into the
3 following July, right? That's when the period for
4 which they're quoting a rate begins, right?

5 A. Where I'm hesitant are, there are two
6 pools, as I understand it, at HealthTrust. There
7 is the calendar year pool which runs January to
8 December, and they also have a fiscal year pool
9 that runs from July 1 to June 30th.

10 Q. Right.

11 A. So --

12 Q. But we went through this before.
13 October actually gets trued up in April, right?

14 MR. VOLINSKY: I'd object.

15 THE PRESIDING OFFICER: Basis of the
16 objection?

17 MR. VOLINSKY: Yeah, the comment that
18 we went through this before is actually
19 inaccurate, because this is a very new topic
20 relating to the existence of timing of two pools.
21 So if he wants to let the witness finish his
22 answer which he started on, I would withdraw my
23 objection.

1 THE PRESIDING OFFICER: Thank you for
2 withdrawing your objection. Would you rephrase
3 your question, Mr. Saturley?

4 MR. SATURLEY: Certainly.

5 BY MR. SATURLEY:

6 Q. I would like you to accept the
7 following assumption, that when HealthTrust issues
8 a GMR in October of 2011, that what they're
9 talking about is the pool that starts in July?

10 A. If that relates to the fiscal year pool
11 and not a calendar year pool, I agree.

12 Q. Okay. Right? And so that's when that
13 pool actually starts, and that's when they
14 actually assume the contractual obligations which
15 you called it at one point, right?

16 A. Right.

17 Q. And that's typically a year, right?

18 A. June 30th.

19 Q. All right, I'll take your corrections.
20 June 30th. This would be July 1, right? That's
21 the period for which they've quoted the GMR is
22 that period, right?

23 A. I agree with that.

1 Q. Now, if somebody actually has a claim
2 here in, say, June 25 -- could be a serious claim,
3 could be a minor claim, right; you don't know?
4 Right? Correct?

5 A. Possible, sure.

6 Q. And if it's a serious claim, the
7 coverage for that can extend well beyond June 30,
8 can it not?

9 A. As to that singular claim, yes.

10 Q. Okay. And so -- let's call it sometime
11 into June of 2014, right?

12 A. As to that singular claim.

13 Q. So, what HealthTrust is doing in
14 October of 2011 is predicting risk and claims
15 through -- potentially through June of 2014 or
16 beyond, if there is some -- what did you call it,
17 noise, that goes through into a later period of
18 time? Is that right?

19 A. Why don't you ask me the specific
20 question. I'm not sure what the question is.

21 Q. Isn't that right, that when they make a
22 prediction, when they assess their risk in October
23 of 2011, they have to look all the way out to

1 sometime in 2014 or beyond?

2 A. I completely disagree.

3 Q. Okay. I'll take your answer.

4 A. Completely disagree.

5 Q. Would you agree with me that the type
6 of risk that members' balance protects against --
7 capital, I'm back to asking you some other
8 questions about that. Would you agree with me
9 that the types of risk that capital protects
10 against would include, for instance, the idea that
11 investment income falls short of what was
12 expected?

13 A. I don't know that I would agree with
14 that.

15 Q. Okay, why not?

16 A. If the -- if there is a loss on the
17 investment it gets reported through the income
18 statement. If, let's say, the individual or
19 company was issued the security question became
20 bankrupt, the capital would have to cover that
21 unexpected event.

22 Q. So if an asset how, some way, for some
23 reason disappears, the company goes bankrupt?

1 A. Capital.

2 Q. Capital. Capital is there for that?

3 A. Correct.

4 Q. Capital is there for -- if litigation

5 takes up, capital is there for that, right?

6 Litigation runs into significant costs, that's

7 what capital is for?

8 A. I disagree with the comment.

9 Q. Is capital there -- is a purpose of
10 members' balance for investment and growth?

11 A. Growth in what?

12 Q. Membership.

13 A. I don't see how capital supports the
14 growth in membership other than bigger company,
15 more capital.

16 Q. Bigger company, more capital, right?
17 Bigger company, more risk, right?

18 A. More risk.

19 Q. I'm sorry?

20 A. More risk.

21 Q. Would you agree with me that capital
22 exists to help with growth in technology needs?

23 A. Again, technically, no, I do not agree

1 with you.

2 Q. Technically no, what does that mean?

3 A. Because a lot of the things that you
4 are raising are actually expenses that flow through
5 the income statement that are not events that are
6 either reserved or treated by capital support.

7 Q. But those are known things for which
8 you budget, right?

9 A. Say again?

10 Q. Known things.

11 A. Known to --

12 Q. If you're budgeting something for the
13 next year, then you budget for it, you do
14 something with that.

15 A. Correct.

16 Q. But capital exists for the
17 unanticipated, does it not? Isn't that part of
18 what it's about?

19 A. Part of capital support is for
20 unanticipated; part of capital is for operating
21 requirements.

22 Q. Operating --

23 A. Requirements.

1 Q. Operating requirements. Would that
2 include technology needs?

3 A. Ordinary course technology.

4 Q. Yes?

5 A. Yes.

6 MR. SATURLEY: That is a convenient
7 time for me, your Honor, and I am continuing to
8 delete topics, and so the break would allow me to
9 do that.

10 THE PRESIDING OFFICER: Okay, and when
11 we come back we'll be moving to a different topic?

12 MR. SATURLEY: Yes.

13 THE PRESIDING OFFICER: Very good.
14 Mr. Volinsky, are you prepared for a noon
15 recess --

16 MR. SATURLEY: Yes, absolutely.

17 THE PRESIDING OFFICER: -- at this
18 time? Very good. All right, then we will be at
19 recess until 1:15.

20 MR. SATURLEY: 1:15. Thank you.

21 (Recess taken.)

22 THE PRESIDING OFFICER: Good afternoon,
23 we're returned from the lunch recess, and

1 Mr. Coutu is still under cross-examination by
2 Mr. Saturley, counsel for LGC. Mr. Saturley.

3 MR. SATURLEY: Thank you, Mr. Mitchell.
4 Over the break, as requested, we created a new
5 exhibit folder for LGC Exhibit 456. I have the
6 original and a copy. I'm going to give it to
7 Ms. Godlewski. Copies have been distributed to
8 counsel.

9 THE PRESIDING OFFICER: Very good. And
10 that was admitted in the morning session. Thank
11 you.

12 BY MR. SATURLEY:

13 Q. Mr. Coutu, good afternoon.

14 A. Good afternoon, sir.

15 Q. I'd like to spend a moment on real
16 estate. Am I correct that with regards to the
17 present arrangement, as you understand it, that
18 HealthTrust does not own the real estate but
19 functions within the real estate that is owned by
20 LGC Real Estate, Inc., is that your understanding?

21 A. Yes, it is.

22 Q. And it's your understanding that at
23 some point during a reorganization that that's

1 when that transfer originally took place?

2 A. As part of the reorganization.

3 Q. Part of the reorganization. Is it my
4 understanding -- strike that. Is it correct that
5 to the extent that HealthTrust is paying rent for
6 the privilege of operating in that facility -- and
7 you know that it does pay some rent, or do you not
8 know that?

9 A. No, I'm aware that there is a rental
10 arrangement.

11 Q. So you're aware there is a rental
12 arrangement on behalf of HealthTrust that pays
13 rent to occupy that space, but am I correct that
14 to the extent that that rate is below market it
15 would be providing an economic benefit to
16 HealthTrust?

17 A. Subject to the below market
18 differential.

19 Q. You don't know subject to how much, you
20 haven't said anything about how much, but you
21 would agree with me that to the extent that it is
22 below the market rent, it is an economic benefit
23 to HealthTrust?

1 A. I am agreeing with the statement.

2 Q. Would you also agree that as of the
3 time that you issued your report and as of the
4 time you were deposed, you did not know whether or
5 not the rate being charged for the rental for the
6 space was a discount for the market or not?

7 A. That is correct.

8 Q. With regards to RBC, RBC is a perfectly
9 acceptable method for determining capital adequacy
10 for a risk pool like HealthTrust, right?

11 A. In my judgment it is.

12 Q. Perfectly acceptable for the board of
13 HealthTrust to undertake to use that methodology
14 for determining its capital adequacy, correct?

15 A. I agree.

16 Q. Indeed, you've said that under certain
17 circumstances -- under certain circumstances -- a
18 higher RBC is better than a lower RBC from the
19 point of view from the insurer's safety and
20 soundness, correct?

21 A. I would make the observation that were
22 not for the statutory requirement of returning
23 excess surplus, the amount of surplus being very

1 high is not a bad thing.

2 Q. Indeed, it's a good thing?

3 A. Indeed, it's a very good thing.

4 Q. It's a very good thing. The more
5 capital on the balance sheet, that's a good thing.
6 I take in mind your caveat, you know, with regards
7 to how 5B plays. But looking at the subject
8 matter, just of is more capital better or not,
9 your answer would be more capital is better?

10 A. More capital is better.

11 Q. And am I correct that only a fool would
12 argue that having more capital is not good or
13 irresponsible?

14 A. Sort of like is there such a thing as
15 too much cash.

16 Q. Okay. And so the question that then is
17 posed is, and that we've been discussing, what's
18 the right amount of capital, right, for this
19 entity?

20 A. Correct.

21 Q. You would agree with me that the board
22 of directors of HealthTrust entering any
23 particular year, when they set a RBC level, the

1 setting the RBC level in advance; you have no
2 quarrel with, correct?

3 A. It's their prerogative to set a level
4 they deem prudent.

5 Q. I'm sorry, it's their prerogative --

6 A. To set a level of RBC they deem
7 prudent.

8 Q. I would like to hear that again. It's
9 their prerogative -- meaning the board of
10 directors of HealthTrust -- it's their
11 prerogative, to set a level of capital that they
12 deem prudent?

13 A. That they deem prudent.

14 Q. And the board has the discretion, does
15 it not, to decide what is an adequate or
16 appropriate level, is that right?

17 A. Again, I have to raise the caveat of
18 subject to the obligation of repatriation of excess
19 surplus, the answer would be yes.

20 Q. And in terms of those competing things
21 that you just described, it is the board's job, is
22 it not, to determine where that level and the
23 balance is?

1 A. Well, it's the board's job to decide
2 with respect to its obligations under the relevant
3 statute what the capital level should be in that
4 balance.

5 Q. That's what the board's there for,
6 that's their responsibility?

7 A. I'm agreeing with you.

8 Q. That's their job. As of the time of
9 your report, and as of the time of your
10 deposition, had you done any investigation of the
11 RBC level of any entity other than LGC?

12 A. I was aware of a couple of things. In
13 certain of the minutes where Peter Reimer reported
14 on RBC level or targets, he made references to Blue
15 Cross/Blue Shield, and I believe that was 2002, and
16 I believe the reference was that they maintain a
17 RBC of 4 to 5, or in percentage speak, 400 to 500.

18 I also read a report prepared by
19 Milliman, I'm guessing here a bit, but I believe it
20 was March of 2011. And in that report, Milliman
21 speaks to the RBC that is followed by Massachusetts
22 in its healthcare related operation -- and I'm
23 quoting from memory as best I can -- but I believe

1 that the report stated that the Massachusetts
2 healthcare RBC was in the 600 or 700 percent range.

3 Q. So as opposed to the 200 percent that
4 you've put down here on your BSR No. 70, contrast
5 that with -- again, with what the Milliman talks
6 about is the Massachusetts -- you lost me a little
7 bit.

8 A. Yeah. The report --

9 Q. Go ahead, I'm sorry.

10 A. The Milliman report that I'm
11 referencing, to the best of my recollection
12 identified Massachusetts health pool, risk pool,
13 and made the comment that its RBC was, again, best
14 of my recollection, 600 to 700 percent.

15 Q. In contrast to this line that you've
16 drawn of 200 percent? Are we talking about the
17 same ballpark, where you've done this --

18 A. We're talking about --

19 Q. Let me finish. When you've done this
20 analysis and drawn the line at 200 percent, what
21 you're saying is in Massachusetts, a report that's
22 referenced in the Milliman report would have --
23 would have said this -- 600 percent or 700

1 percent, do I understand that right?

2 A. Again, to the best of my recollection,
3 is that that report made reference to 600 percent
4 or 700 percent, in that vicinity.

5 Q. Is that -- outside of reading
6 Mr. Reimer's references in some minutes, is that
7 where that comes from?

8 A. No, the one I just testified is the
9 Milliman report that was prepared.

10 Q. I'm sorry, I'm going back.

11 A. Okay.

12 Q. The first thing you talked about was
13 some minutes in which Mr. Reamer gave some --

14 A. Mr. Reamer in several minutes talked
15 about the level or RBC that the LGC board should
16 adopt for HealthTrust.

17 Q. What I'm trying to do is understand the
18 universe of your investigation on RBC. And you
19 read some minutes, LGC minutes, right?

20 A. Correct.

21 Q. In which Mr. Reimer talked about other
22 entities, and you read the Milliman report, right?

23 A. That's correct.

1 Q. And the Milliman report talks about
2 apparently Massachusetts where they're at 600 to
3 700 percent?

4 A. Again, based on my recollection.

5 Q. Is that the only investigation you have
6 done of the RBC levels for any entity other than
7 LGC?

8 A. I reviewed the specifics promulgated by
9 the NAIC as it relates to healthcare and some of
10 the changes that occurred in the methodology of RBC
11 that changed initially in 1998, and then there was
12 a second change to produce something called the
13 trend test.

14 Q. And is that material found in your file
15 that we looked at during your deposition?

16 A. I believe it was in my file in the
17 binder under the section marked RBC.

18 Q. Mr. Coutu, I was sent some e-mails
19 from -- some material from Mr. Volinsky's office,
20 and I want to ask you if this is what you're
21 referring to. Is this the material that was in
22 your binder that you were talking about that's RBC
23 related material?

1 A. Yes, this is the trend test that I was
2 just referencing. I can't tell you a hundred
3 percent this is everything, but it looks like it's
4 substantially it.

5 Q. Thank you. I just would like to ask
6 you a couple of questions about some of the
7 material that's found in your file. There's an
8 overview here on a page that's entitled risk-based
9 capital, and it defines it as risk-based capital
10 represents an amount of capital based on an
11 assessment of risks that a company should hold to
12 protect customers against adverse developments.
13 Did I read that right?

14 A. I'm lost, counselor. Could you just
15 point me where you're at --

16 Q. I'm reading the very first paragraph.
17 The definition, as expressed in the materials
18 found in your file, risk-based capital represents
19 an amount of capital based on an assessment of
20 risks that a company should hold to protect
21 customers against adverse development. Do you see
22 that?

23 A. I do.

1 Q. Have I read it correctly?

2 A. It's a little bit blurred, but from
3 where I'm sitting it looks to be correct.

4 Q. Does that sound like a definition with
5 which you would agree for purposes of your
6 testimony?

7 A. It's a very general definition, I don't
8 take exception with it.

9 Q. You do not take exception?

10 A. The adverse loss development, if I read
11 that correctly, I could -- I could comment.

12 Q. Let's go later on down this. Do you
13 see the paragraph that starts "to interpret"?

14 A. I do.

15 Q. To interpret the absolute meaning of a
16 RBC ratio requires an analysis of the calculation.
17 You understand that to be the case, right?

18 A. Yes, I do.

19 Q. A few of the more basic questions would
20 include, what is the underlying accounting basis;
21 i.e., how are assets and liabilities valued,
22 right?

23 A. Yes, I agree.

1 Q. You agree with that. Do you know how
2 the underlying assets and liabilities are valued
3 with regards to HealthTrust?

4 A. They followed generally accepted
5 accounting principles as modified for fund
6 accounting and governmental plotting standards
7 bureau accounting.

8 Q. Do you know how capital is defined in
9 the RBC formula?

10 A. I -- I'm guessing a little bit, but I
11 believe that capital here is referring to the
12 portion of the RBC that determines what is a
13 hypothetical level of capital that a particular
14 balance sheet and insurance type company needs to
15 have.

16 Q. What's this next bullet point mean?
17 What protection does a 100 percent RBC ratio
18 imply, e.g., protects 95 percent of the time?

19 A. The -- one of the components of RBC --
20 and, again, going back to my comment a second ago
21 with respect to the hypothetical level of capital,
22 in the RBC formulation that level is referred to as
23 the authorized control level.

1 So what the formula purports to do is
2 determine, first, what is the level of capital that
3 the balance sheet in the business dictates, and
4 then as we mentioned several times, it was then
5 determined that multiplying that by 2 created this
6 margin or cushion or protection, excess of 100
7 percent.

8 Q. What's the time horizon implied? Do
9 you know what that means with regard to a RBC
10 calculation for HealthTrust?

11 A. I don't have a definitive response. My
12 best guess of time horizon recognizes that there is
13 a substantial difference in measuring and sizing
14 liabilities between an insurance company which has
15 relatively short-term coverages, one years, two
16 years, versus other companies that may have
17 coverages five, ten or more years.

18 Q. Would you agree with me that the
19 actuary who has been doing this calculation for
20 HealthTrust for over 20 years, who is presumably a
21 little more familiar with it than you with regards
22 to its business and the time horizon that is
23 implied, and indeed exists in its business, would

1 have a better sense of the meaning of an RBC ratio
2 regarding that company than you?

3 A. Not on a time horizon, because that is
4 an exhibit that is prepared by the accountants, and
5 is referred to as the ten-year claims development
6 exhibit. That exhibit tells you very precisely the
7 time horizon of the claims associated healthcare.

8 Q. What about this next bullet point.
9 Does the calculation include the provision for new
10 business, or does it just look at running out the
11 current business? Would you agree with me that
12 that suggests that there are two different ways to
13 analyze how the RBC applies to a particular
14 business?

15 A. There's an underwriting component part
16 of the mathematical calculation, obviously.

17 Q. And that --

18 A. That's the new business.

19 Q. That's the new business. And so you
20 would therefore have a different result and a
21 different feel, and a different RBC result and an
22 analysis of that RBC result for a company that was
23 just running out current business?

1 A. I don't -- I don't think I'd agree with
2 the statement as stated. The RBC form of a
3 healthcare is a formulation that takes into
4 consideration all of the risk components, whether
5 it's HealthTrust, whether it's Aetna, whether it's
6 Blue Cross/Blue Shield.

7 So that the formulation -- the
8 mathematical formulation doesn't change, and
9 business risk and underwriting risk is a risk
10 component part and parcel of that mathematical
11 calculation.

12 Q. Do you have a sense of the claims that
13 HealthTrust pays in a year?

14 A. I know that in 3010 -- excuse me --
15 2010 it was \$361 million.

16 Q. And so for a \$361 million, what you're
17 suggesting is that \$40 million is sufficient
18 capital for them to hold?

19 A. Absolutely.

20 Q. What happens if their actuarial
21 projections are off by 5 percent?

22 A. I believe that I testified and had a
23 chart to demonstrate that for the last ten years

1 HealthTrust's premiums have been excess of claims
2 paid each and every year. Two, if there was an
3 aberration with respect to a given underwriting
4 year, some not good thing happened, the nature of
5 this business is that it allows it to be repriced
6 annually with the caveat of the GMR providing a
7 somewhat longer period for purposes of locking in
8 rates. Other than that, this is business that can
9 be repriced annually.

10 Q. Correct me if I'm wrong, but if
11 you're -- if you take a kick to your capital one
12 year, and then you're repricing that to replace
13 that for the next year, you're not just repricing
14 to replace the business, you're also repricing to
15 replace the capital, is that what you're
16 suggesting?

17 A. In the pricing mechanism -- strike
18 that. The current formulation that is being used
19 by HealthTrust with respect to its pricing model
20 analysis and determination has a number of risk
21 factors built in to provide for certain protections
22 in the balance sheet for the company.

23 MR. SATURLEY: Mr. Mitchell, can I ask

1 for a -- I asked him, I thought, a relatively
2 simple question based on a --

3 THE PRESIDING OFFICER: Would you
4 repeat your question?

5 MR. SATURLEY: Certainly.

6 THE PRESIDING OFFICER: And Mr. Coutu,
7 would you pay particular attention to the form of
8 his question, please?

9 THE WITNESS: Certainly.

10 BY MR. SATURLEY:

11 Q. If a company takes a blow to its
12 capital, and as you've suggested, that can be
13 repriced the next year, my question is very
14 simple. In that next year's repricing, are you
15 not only pricing for the claims and the business
16 that you would orderly expect to do that year, but
17 you are also including in the repricing the
18 capital that you are trying to rebuild, yes or no?

19 A. Maybe.

20 MR. SATURLEY: I'm going to try a
21 little experiment here, Mr. Mitchell.

22 THE PRESIDING OFFICER: Feel free to
23 call forward anyone to assist you.

1 MR. SATURLEY: Thank you. I'm putting
2 up Exhibit 357, and I'll give the witness a copy
3 so he can either look at the projection or look at
4 the sheet. And I give you the same opportunity.

5 THE PRESIDING OFFICER: Thank you.

6 BY MR. SATURLEY:

7 Q. Exhibit 357 is entitled regulatory
8 guidance on the misuse of RBC in rate making, and
9 this is issued by the NAIC. That's the entity
10 that you've referred to a number of times in your
11 testimony, is it not?

12 A. National Association of Insurance
13 Commissioners.

14 Q. And this is a guidance, a regulatory
15 guidance that was adopted by a particular task
16 force by the NAIC and issued on August 12, 2008,
17 am I correct?

18 A. It makes reference to the casualty
19 actuarial and statistical task force.

20 Q. Have you ever seen this document
21 before?

22 A. I have not.

23 Q. Let's take a minute and go through it,

1 please. Let's look at the first paragraph.

2 THE PRESIDING OFFICER: Let him read it
3 in full context, please, Mr. Saturley.

4 MR. SATURLEY: Certainly.

5 BY MR. SATURLEY:

6 Q. Let me give you an opportunity to read
7 it.

8 THE PRESIDING OFFICER: Why don't you
9 read it, Mr. Coutu, please. Don't feel any
10 pressure.

11 A. I have read the document.

12 Q. You've read the document? You would
13 agree with me that the national insurance --
14 excuse me, the National Association of Insurance
15 Commissioners is an authoritative group with
16 regard to this field?

17 MR. VOLINSKY: Objection.

18 THE PRESIDING OFFICER: Mr. Volinsky,
19 go ahead.

20 MR. VOLINSKY: This doesn't reflect
21 adoption by the NAIC, it reflects adoption by a
22 task force. With that distinction, I have no
23 questions -- no objections. But this isn't a NAIC

1 approved document, this is a sub task force
2 approved document.

3 THE PRESIDING OFFICER: Mr. Saturley?

4 MR. SATURLEY: That's exactly what it
5 says. It's adopted by the NAIC's casualty
6 actuarial and statistical task force. I'm
7 certainly willing to accept that amendment.

8 THE PRESIDING OFFICER: So you're not
9 purporting it to be anything more than what it
10 states?

11 MR. SATURLEY: Anything more than what
12 it is. A regulatory guidance on the misuse of RBC
13 and rate making that comes out over the letterhead
14 of National Association of Insurance
15 Commissioners.

16 BY MR. SATURLEY:

17 Q. Which is the group that you have
18 referred to a number of times, is that correct?

19 A. I have referred to the group a number
20 of times.

21 Q. Okay, let's go through it. The
22 casualty actuarial and statistical task force --
23 which is to reemphasize the previous statement --

1 the capital levels indicated by the risk based
2 capital formula should not be used as or assumed
3 to be measures of adequate capital. Do you see
4 that?

5 A. I do.

6 Q. And you've never seen this document
7 before?

8 A. I have not.

9 Q. Okay. Would you agree with me that
10 they go on -- this task force of the NAIC goes on
11 to say, using or assuming to be measures of
12 adequate capital would be an erroneous and
13 therefore inappropriate use of RBC.

14 Do you see that? That's the first
15 paragraph.

16 A. I do.

17 Q. Let's go on. There seems to be a
18 common and persistent misconception that the upper
19 end of the company action level -- those are
20 capitalized letters -- that is the capital level
21 that is 200 percent of a company's authorized
22 control level risk-based capital requirement
23 published in the annual statement -- let me pause

1 there.

2 Is that the 200 percent that you've
3 told us about a number of times? 2.0, that's what
4 you're talking about, right, the upper end of the
5 company action level? I want to make sure we're
6 talking about the same thing. Right?

7 A. 200 percent is what's on that board
8 behind you.

9 Q. And that's what you've talked about,
10 the NAIC's use of 200 percent as the action level.
11 So they go on to say there seems to be a common
12 and persistent misconception that this is somehow
13 a measure of, quote, unquote, adequate capital.
14 Right?

15 A. I'm following you.

16 Q. And you would agree with me that that's
17 what it says, this task force, right?

18 A. I am not disputing what you're reading
19 in whole or in part.

20 Q. Okay. The logic of this -- and I
21 assume what they mean is this common and
22 persistent misconception -- appears to be that in
23 most cases no regulatory action is triggered under

1 the RBC model law when an insurer's policyholders'
2 surplus exceeds that amount, that this amount is
3 considered by the NAIC to be the lowest level that
4 is still adequate. Right?

5 Next sentence, this misconception
6 appears to be surfacing most commonly in a rate
7 regulation context where this surplus level, 200
8 percent of authorized control level, is frequently
9 misconstrued as an adequate surplus level.

10 Have I read that correctly?

11 A. I am not taking exception to your
12 reading of the document.

13 Q. Okay, let's look at the next paragraph.

14 MR. VOLINSKY: You're not going to
15 finish the question?

16 THE PRESIDING OFFICER: I was just
17 going to say.

18 MR. SATURLEY: I'm sorry.

19 THE PRESIDING OFFICER: The document
20 speaks for itself. And if you're going to proceed
21 in this manner, please read the complete sentence.

22 MR. SATURLEY: I'm sorry.

23 BY MR. SATURLEY:

1 Q. Frequently misconstrued as an adequate
2 surplus level that can be used to establish limits
3 on permitted profit levels, surplus accumulation
4 or leveraged ratios, right?

5 Next paragraph. It is appropriate to
6 think of the capital level of 200 percent -- and
7 that's the 200 percent that you've made reference
8 to many, many times -- of the authorized control
9 level RBC requirement as the minimum
10 capitalization level above which an insurer can
11 operate without regulatory intervention, unless it
12 is triggered by the trend test as defined in the
13 RBC model law.

14 That's when it is appropriate to think
15 of the capital level as a 200 percent, right?
16 That's what they say, this task force of the NAIC?

17 A. I'm waiting for a question. If you
18 want me to stipulate that what this letter speaks
19 to is that 200 percent is the minimum RBC capital,
20 I can so state.

21 Q. Let's go to the third sentence.

22 THE PRESIDING OFFICER: Mr. Saturley,
23 could we just ask a couple of questions and let

1 the document speak for itself? I presume that
2 you're going to put this into evidence.

3 MR. SATURLEY: I am going to put this
4 into evidence.

5 THE PRESIDING OFFICER: And just in the
6 economy of time, please.

7 MR. SATURLEY: Okay.

8 BY MR. SATURLEY:

9 Q. Would you agree with me, Mr. Coutu,
10 having read this task force regulatory guidance on
11 the misuse of the RBC, that a representative of
12 the NAIC who served on this task force and who
13 would have endorsed this particular statement,
14 would not agree with your conclusion that 200
15 percent was an adequate level in a meaningful way
16 for a company like HealthTrust?

17 A. Two comments. One, I don't know if
18 this is a promulgation by NAIC, it is a
19 promulgation by the cited task force. No. 2, I
20 have attempted to explain, but I have not
21 successfully been able to, the notion of a
22 modification made to the RBC called a trend test.
23 That would be applicable to healthcare companies.

1 Q. Would you agree with me with the last
2 sentence, the tasks of evaluating the optimum
3 capitalization of insurers -- optimum
4 capitalization -- is separate and distinct from
5 the task of evaluating minimum capital standards
6 for solvency regulation.

7 Would you agree with me that the NAIC
8 is drawing a distinction between optimum capital
9 level and the minimum amount required for a
10 solvency analysis?

11 A. I would agree with you that the
12 casualty and actuarial statistical task force has
13 so concluded.

14 Q. Are you aware of any other statement by
15 the NAIC proper that somehow disavows the
16 regulatory guidance issued by its task force?

17 A. Excuse me, counselor, I didn't hear the
18 last part of the sentence.

19 Q. Are you aware of any statement of any
20 kind from the NAIC proper that somehow or in any
21 way disavows this statement of its task force?

22 A. I'm not aware of anything that would
23 disavow, but this is not a matter that I'm tracking

1 with any frequency at all.

2 MR. VOLINSKY: We don't object.

3 THE PRESIDING OFFICER: I'm sorry.

4 Please, Mr. Volinsky, would you approach the
5 microphone?

6 MR. VOLINSKY: We don't object to this
7 document as an exhibit.

8 THE PRESIDING OFFICER: Are you reading
9 Mr. Saturley's mind?

10 MR. SATURLEY: Yes, he's reading my
11 mind.

12 THE PRESIDING OFFICER: Okay.

13 MR. SATURLEY: I would like to move
14 this document as a full exhibit.

15 THE PRESIDING OFFICER: And there is no
16 objection, but for foundation I have a question,
17 Mr. Saturley.

18 MR. SATURLEY: Sure.

19 THE PRESIDING OFFICER: Can you tell me
20 the source of this document? I understand the
21 letterhead, but can I -- you know, is this in the
22 public domain?

23 MR. SATURLEY: It is -- I believe it to

1 be, because that's how I obtained it. But whether
2 or not I violated any copyright laws, I'm not
3 aware.

4 THE PRESIDING OFFICER: Just a question
5 arose in my mind that was developed in your
6 questioning about whether this was -- it was
7 adopted by the subcommittee, there had been no
8 foundation as to -- if I might liken it at a risk
9 to the American Bar Association, you know, there's
10 this kind of progression where things work to the
11 top, so I was inquiring for that purpose.

12 MR. SATURLEY: Let me offer, proffer
13 this for later confirmation by one of our
14 witnesses about its wide acceptance in the
15 industry.

16 THE PRESIDING OFFICER: I'll accept it
17 then with that representation as Exhibit LGC No.
18 357.

19 (LGC 357 was marked and accepted into evidence.)

20 THE PRESIDING OFFICER: Good afternoon,
21 Mr. Gordon. You will be the next to examine
22 Mr. Coutu.

23 MR. GORDON: Yes.

1 CROSS-EXAMINATION

2 BY MR. GORDON:

3 Q. Good afternoon. I think we've met, I'm
4 Steve Gordon.

5 A. A number of occasions.

6 Q. And I represent Maura Carroll. And I
7 don't have a lengthy list of questions, so I'm
8 going to be somewhat short, but some just few
9 pointed areas that I'd like to ask you about.

10 The first area is with regard to the
11 preparation of your report, and I want to know how
12 long did it take you to prepare your report; when
13 did you start and when did you end?

14 A. There was a concentrated effort to
15 complete the report that took me about 72 hours,
16 but there are elements of that report that were
17 written a year, year and a half earlier.

18 Q. And when you prepared your report, you
19 listed the scope of documents and materials that
20 you relied upon, is that correct?

21 A. I did.

22 Q. And actually you listed a whole series
23 of documents concerning -- mostly financial

1 statements, correct?

2 A. Mostly financial statements.

3 Q. There were some bylaws that you
4 reviewed as well, correct?

5 A. That is correct.

6 Q. And then you put -- and although you
7 didn't specifically mention minutes in your
8 report, you said, and such other documents or
9 material which I deem necessary or appropriate as
10 a catchall?

11 A. Right.

12 MR. VOLINSKY: I'd object. It's a
13 misstatement.

14 THE PRESIDING OFFICER: Grounds,
15 Mr. Volinsky?

16 MR. VOLINSKY: Minutes are specifically
17 referenced and quoted in the body of the report.
18 If I can find it for you quickly, I'll reference
19 that.

20 THE PRESIDING OFFICER: This is BSR
21 68B?

22 MR. VOLINSKY: Yes, it is. It's page
23 5, the actual bullet actually quotes from minutes,

1 Reimer's presentation on RBC.

2 THE WITNESS: July the 10th, 2008.

3 MR. GORDON: Well, I don't think what I
4 said was a misquote. I was going to get to that,
5 your Honor.

6 THE PRESIDING OFFICER: I understand.
7 I'm just catching up. I'm looking at page 5, and
8 I'm looking for the quotation in question. Could
9 you direct my attention, Mr. Volinsky, what
10 paragraph?

11 MR. VOLINSKY: The bottom bullet, the
12 second line begins the quote. Oh, it's page 5 in
13 his report. So you have to go to 68B to start.

14 THE PRESIDING OFFICER: I am in 68B.

15 MR. VOLINSKY: And then the numbers in
16 the middle of the bottom.

17 THE PRESIDING OFFICER: Yes, and I'm at
18 page 5, and I have no bullets. So let's just make
19 sure we're accurate.

20 MR. GORDON: Can I approach the bench?
21 Just to make this simpler, because he misstated --
22 it's right there.

23 THE PRESIDING OFFICER: Apparently you

1 had a mutual feeling about the misstatement. I
2 just need to be directed to the exhibit.

3 MR. VOLINSKY: You weren't in the right
4 report. We are in the proceeding report.

5 THE PRESIDING OFFICER: All right, I'm
6 on the right page. I feel much better.
7 Mr. Gordon, please proceed.

8 BY MR. GORDON:

9 Q. In the introduction you mentioned the
10 documents you reviewed.

11 A. Correct.

12 Q. And just to be clear, just to put what
13 I was asking --

14 MR. GORDON: I'll show you, if that's
15 all right. It's that section right there. All
16 right?

17 THE PRESIDING OFFICER: Okay.

18 BY MR. GORDON:

19 Q. And when we undertook your deposition,
20 we asked you to bring all of the documents that
21 you had relied upon in preparing your report,
22 correct?

23 A. You did.

1 Q. And you indicated to us that you
2 brought to that deposition your entire file that
3 you relied upon when preparing your report, is
4 that correct?

5 A. As best I knew what the contents were
6 in that file, you are correct.

7 Q. And but we asked you if you had left
8 out any documents, you answered to us, no, that
9 everything that you needed you brought to that
10 deposition, right?

11 A. That's not correct.

12 Q. How is that not correct?

13 A. I explained that there were documents
14 relating to various discussions between myself and
15 Mr. Fournier which predated my engagement, and I
16 did not realize I had to produce those, and that
17 was produced.

18 Q. Right, but any --

19 A. There were certain documents -- I'm
20 trying to answer your question.

21 Q. Okay.

22 A. There were certain documents relating
23 between discussions myself and Mr. Lange, your team

1 asked me to produce those documents, and I did.

2 So at the time I delivered documents,
3 it was not complete.

4 Q. And now you've produced everything to
5 this day?

6 A. I -- I provided those e-mails and
7 correspondence to Mr. Volinsky, and I presume they
8 have been tendered to you, your team.

9 Q. And you produced at your deposition two
10 large binders of the documents that you brought to
11 the deposition, correct?

12 A. I produced the preponderance of the
13 information. There was a secondary pile that I did
14 not produce that was brought, I presume by
15 Mr. Volinsky, that had all of the e-mails relating
16 to discussions and communication between myself and
17 Mr. Wingate. I believe there were other e-mails
18 that were produced by Mr. Volinsky or his staff
19 that were on that table that day that I did not
20 produce.

21 Q. So the only point I'm trying to just
22 gather at this point is that all of the materials
23 that you relied upon when preparing your report

1 you have produced in this litigation?

2 A. This is getting to the board minutes,
3 and the board minutes that I reviewed were sent to
4 me in electronic form. There are certain board
5 minutes that I reviewed and reported on in respect
6 of my report, all right? Were those minutes in my
7 binder, I think is the question, I don't believe
8 they were, I was under the impression they were
9 being produced along with the e-mails that I did
10 not produce relative to communications with the
11 BSR.

12 Q. So we can agree that in the binders of
13 the documents that you brought, there were no
14 board minutes in those binders, is that correct?

15 A. To the best of my recollection, I think
16 is what I'm saying.

17 Q. And having -- as of today -- I could
18 represent, I don't believe I've received any board
19 minutes that you've reviewed, electronically or
20 otherwise. And if I'm mistaken, correct me.

21 A. I don't know the answer to the question
22 because there was certain product that I did not
23 produce. I don't know if those minutes were in the

1 e-mails. As I just mentioned, it was a bunch of
2 e-mails that were brought to the deposition and
3 placed on the table. I did not review that
4 particular stack of materials to know whether or
5 not there were any board minutes in there or not.

6 THE PRESIDING OFFICER: Mr. Gordon,
7 would you like to consult with BSR counsel to see
8 if you can determine where, if they were produced
9 at this time?

10 MR. GORDON: Do you want me do that
11 now?

12 THE PRESIDING OFFICER: If you would, I
13 think. That will solve at least where we are
14 right now.

15 MR. VOLINSKY: To be honest, I don't
16 think I know the answer off the top of my head,
17 but the deposition resulted in a stack of e-mails
18 produced on the table that day, as the witness
19 mentions. That was copied for the respondents,
20 and subsequently there were some follow-up e-mails
21 that were requested, and those were sent by me,
22 maybe twice, but certainly once to the respondents
23 as well.

1 THE PRESIDING OFFICER: Thank you for
2 that explanation. Mr. Gordon, can you proceed,
3 and you all can straighten that out.

4 MR. GORDON: I'll be glad to, because
5 it's very simple. I don't -- I did not get them,
6 and that was simply my point.

7 THE PRESIDING OFFICER: You understand
8 my position now.

9 MR. GORDON: To move on.

10 THE PRESIDING OFFICER: We have
11 representation of counsel. So now I'm faced with
12 representation of two opposing counsel, so I'm
13 suggesting that perhaps you can meet this evening
14 and see if it's been, shall we say, an event of
15 nonfeasance.

16 MR. GORDON: I certainly shall.

17 THE PRESIDING OFFICER: Thank you.
18 Please proceed.

19 MR. GORDON: Thank you.

20 BY MR. GORDON:

21 Q. Do you know Maura Carroll?

22 A. I do.

23 Q. And you met her at MHMA in charge of

1 lobbying?

2 A. I'm not sure what her position was. I
3 thought when she and I first met, I believe
4 sometime in '08, that she was head of the legal
5 department of LGC. I knew she also was involved in
6 the legislative lobbying effort as well.

7 Q. And you know that she did not serve on
8 the board of LGC, correct?

9 A. That I'm aware of.

10 Q. And you understand she's the executive
11 director, correct?

12 A. I'm aware that she succeeded
13 Mr. Andrews, at least as interim director I think
14 '09, and then became the permanent director some
15 point thereafter.

16 Q. And at your deposition you,
17 understanding her role, said and testified that
18 you did not think her job level to rise to the
19 level of a fiduciary, correct?

20 A. I thought I responded -- and if the
21 record says differently -- I thought I responded to
22 the best of my knowledge Ms. Carroll has not and
23 does not serve on the board of directors of LGC,

1 and as such did not have a fiduciary duty as a
2 board member.

3 MR. VOLINSKY: May I interject?

4 THE PRESIDING OFFICER: You have an
5 objection? Please state your objection.

6 MR. GORDON: I don't want him to be
7 coaching the witness.

8 THE PRESIDING OFFICER: I understand.
9 Listen very closely to his objection. The grounds
10 for your objection?

11 MR. VOLINSKY: The grounds are that
12 this opens the door for this witness to testify
13 about fiduciary duties which was shut down
14 yesterday.

15 THE PRESIDING OFFICER: This is true.

16 MR. VOLINSKY: So if it's happening,
17 that's fine with me, but I just want it clear that
18 now I feel allowed to ask him about fiduciary
19 duties of board members, because Mr. Gordon has
20 opened that door. That's my point.

21 THE PRESIDING OFFICER: Excuse me, and
22 you will get your opportunity on redirect when
23 cross-examination is completed, to the extent that

1 its permissible. And I accentuate to the extent
2 that it's permissible.

3 So my intent is to have you continue
4 with your questioning, and if there's an objection
5 on redirect, I'll hear the objection.

6 MR. GORDON: Well, I'll make it easier,
7 I'll withdraw the question, because I don't think
8 that would be appropriate to related to
9 Mr. Carroll. So if that's the basis of his
10 objection, I'll withdraw it.

11 THE PRESIDING OFFICER: Okay, the
12 question is withdrawn. Can you proceed, please?

13 MR. GORDON: Yes.

14 BY MR. GORDON:

15 Q. When you worked at Kemper, were you
16 terminated?

17 A. No, we reached a point where both sides
18 agreed that I would resign from Kemper.

19 Q. And if you did not resign do you think
20 you would have been terminated?

21 A. That's a speculative question, I don't
22 know the answer.

23 Q. Did you ever once suggest that you

1 would have been?

2 A. Did I ever suggest --

3 Q. Yes.

4 A. -- that I would have been? There was
5 clearly some disagreements between myself and the
6 board with respect to the potential insolvency of
7 Kemper.

8 Q. And do you remember testifying in
9 Pennsylvania litigation that I think it's fair to
10 say that had we not come to terms, termination
11 might have been an outcome? Do you remember
12 testifying to that?

13 A. You know, I don't recall that specific
14 statement, but, you know, if you're asking me in
15 the context of the Kemper disagreement whether or
16 not termination was a possibility, lots of things
17 are possible.

18 Q. Do you remember an announcement that
19 followed that -- your end of relationship with
20 Kemper, do you remember a story that ran that the
21 tough tactics used for the runoff of Kemper
22 Insurance Company are still continuing despite a
23 change of management? Do you remember that?

1 A. I don't remember that.

2 Q. Kemper announced two weeks ago that by
3 mutual consent it was terminating the runoff
4 contract with Kenning Financial Advisors and
5 Michael Coutu, do you remember that?

6 A. That arrangement came to an end and
7 they hired the members of my team.

8 Q. And do you remember this statement:
9 The change, however, has done little to help the
10 widows and orphans of dead workers, amputees and
11 others who are seeking compensation for workplace
12 accidents at an Indiana steel plant which had a
13 Kemper surety bond to back up, do you remember
14 that statement?

15 A. Disgruntled claimants are very common
16 in the insurance business, whether it's a runoff or
17 a continuing underwriting contract.

18 Q. Disgruntled claimants including widows
19 and amputees, right?

20 A. I don't know the source of that comment
21 or the fact that it has any relevance in the
22 context you're asking me.

23 Q. And do you remember being terminated

1 from Lincoln as well, and that there was a lawsuit
2 filed related to your misconduct there?

3 A. I take great exception to misconduct.

4 Q. Was a lawsuit filed?

5 A. A lawsuit was filed.

6 Q. And did it allege that you engaged in
7 misconduct?

8 A. That I don't know. It alleged that I
9 did not have the ability to serve due to a conflict
10 of interest.

11 Q. Did that litigation allege that you had
12 made an unlawful demand of \$20 million? Do you
13 remember that?

14 A. Nothing unlawful about that demand. I
15 think you used the word alleged, right?

16 Q. Right.

17 A. There was nothing unlawful about my
18 demand.

19 Q. But it was alleged, right?

20 A. For \$21 million.

21 MR. VOLINSKY: Can I just ask what's
22 alleged? I object.

23 MR. GORDON: On October 27 --

1 MR. VOLINSKY: I object.

2 THE PRESIDING OFFICER: Time out,
3 gentlemen.

4 MR. VOLINSKY: My objection is --

5 THE PRESIDING OFFICER: Time out. That
6 means you, too, Mr. Volinsky. There is an
7 objection to the form of the question. You want
8 to translate that to me?

9 MR. VOLINSKY: Right. I don't know
10 what --

11 THE PRESIDING OFFICER: Time out. You
12 don't have to know just yet. Mr. Gordon, will you
13 ask the question in a different form.

14 MR. GORDON: I certainly will.

15 THE PRESIDING OFFICER: Thank you.

16 BY MR. GORDON:

17 Q. Was a lawsuit filed against you by
18 Lincoln General Insurance Company?

19 A. Yes. A declaratory judgment.

20 Q. And in that declaratory judgment there
21 were allegations that you were involved in a
22 conflict of interest, correct?

23 A. Correct.

1 Q. And the allegations were that due to
2 the divestiture of certain stock that you were
3 making a wrongful demand saying that you were
4 entitled to \$20 million, correct?

5 A. It's not incorrect that it was a
6 wrongful demand. It alleges that, it's an
7 allegation in the complaint.

8 THE PRESIDING OFFICER: I think you
9 have your answer on that one. Please go to the
10 next question.

11 BY MR. GORDON:

12 Q. And that complaint also alleged that
13 you engaged in a secret scheme to take over the
14 insurance company, is that correct?

15 A. That is an allegation, again, in the
16 complaint.

17 Q. And that complaint settled as well?

18 A. It did.

19 Q. And it's confidential?

20 A. It is.

21 Q. And the Kemper is confidential?

22 A. It is.

23 MR. GORDON: I have no further

1 questions.

2 THE PRESIDING OFFICER: Thank you,
3 Mr. Gordon. Mr. Howard, do you have some
4 cross-examination this afternoon for this witness?
5 If so, please come forward.

6 MR. HOWARD: Mr. Mitchell, as painful
7 for it is for me to say this, I do not have any
8 questions in light of his testimony so far. Thank
9 you.

10 THE PRESIDING OFFICER: Thank you,
11 Mr. Howard. Now we're on redirect in accordance
12 with our preliminary discussions, and so that will
13 be kept within the bounds of cross-examination.
14 Mr. Volinsky, please proceed.

15 MR. VOLINSKY: Thank you, your Honor.
16 Mr. Mitchell, sorry.

17 REDIRECT EXAMINATION

18 BY MR. VOLINSKY:

19 Q. Mr. Coutu, I'm showing you a hand-drawn
20 chart that Mr. Saturley drew during his
21 cross-examination that hasn't been marked yet, but
22 he asked you in drawing this chart a couple of
23 questions about capital needs and whether the GMR

1 process essentially resulted in a multi-year
2 capital need, and you said that you did not agree
3 with him?

4 A. That is correct.

5 Q. Would you tell us why you do not agree
6 with that analysis?

7 A. Three comments. One, I specifically
8 noted with respect to Mr. Saturley's questions that
9 he picked a claim at the end of the underwriting
10 period.

11 I've testified numerous times in the
12 last couple of days that the preponderance of
13 claims arise during the policy period. Two,
14 Mr. Reimer has used various risk factors in
15 calculating rates. A couple of examples, he uses a
16 10 percent margin. 10 percent margin is a
17 proviso -- it's insurance-speak to make provision
18 for adverse loss development, therefore it's
19 accounted for in the reserve section as opposed to
20 the capital section.

21 Q. All right, let me stop you on that one.
22 What does that mean, it's accounted for in the
23 reserve section as opposed to capital?

1 A. I don't know what the case is with
2 respect to LGC. In normal insurance provisions,
3 adverse development is another factor in addition
4 to unfully settled claims incurred by not reporting
5 claims, and loss adjustment expense; think of it as
6 the fourth prong, adverse loss development, okay?

7 Q. Okay.

8 A. The point being is it's not always
9 provided for as a capital issue.

10 Q. Okay.

11 A. And, lastly is, taken in the extreme,
12 in the extreme, if all these sort of timelines
13 apply, if there were no risk adjustment factors, in
14 Peter Reimer's rating analysis, his leading to
15 conclusion that there's three times more capital
16 necessary to support this business, and that's just
17 an erroneous conclusion.

18 Q. Why is that erroneous?

19 A. Because, again, the claim periods do
20 not extend to the period of time that's being drawn
21 here, and also, again, because you get to reprice
22 the cost of the product on an annual basis.

23 Q. So if this is a three-year model as

1 Bill has drawn it, you would have pricing
2 opportunities twice during the month?

3 A. Well, you're due to have repricing.
4 The GMR will lock in the maximum rate, okay, for
5 whomever are the beneficiaries of that quote, which
6 is not necessarily every single healthcare
7 arrangement in the various pools of health trusts,
8 No. 1.

9 No. 2 is that, as I've quoted already,
10 the GMR rate structure has adjustments, factors,
11 load or other arrangements to compensate this is an
12 extended quote that's going on beyond 12 months.

13 Q. Let me just ask you a question about
14 that. When you say there are adjustments built
15 into the GMR rating because it goes for a little
16 bit longer period of time --

17 A. Yes.

18 Q. -- are those adjustments to make the
19 rates higher or lower?

20 A. No, they would have an increase effect
21 on the rates. Recognizing the incremental risk, if
22 I can use that term, of this arrangement.

23 Q. And then when premiums are calculated

1 based on that longer term GMR structure, are those
2 calculations based on that enhanced structure?

3 A. Yes, it is. I can't speak to the
4 sufficiency and accuracy of the calculations used,
5 but there are provisions made.

6 Q. Slow down. But that's not capital?

7 A. That's not capital.

8 Q. That's operating --

9 A. That's pricing. That's all pricing.

10 Q. So this hand-drawn chart, does it help
11 us understand the capital needs of this
12 enterprise?

13 A. Not in my judgment.

14 Q. If the Local Government Center
15 determines its capital needs based on the analysis
16 described on this sheet by Mr. Saturley, would
17 that result in it holding too much or too little
18 capital?

19 A. It would artificially inflate the
20 capital.

21 MR. VOLINSKY: If I may, I'd ask that
22 this chart be marked as BSR 72, just so we have it
23 in the record.

1 THE PRESIDING OFFICER: Any objection?
2 Okay, BSR 72, a hand-drawn chart by Mr. Saturley,
3 used by both Mr. Saturley and Mr. Volinsky.

4 (BSR 72 was marked and entered into evidence.)

5 BY MR. VOLINSKY:

6 Q. Do you have the Exhibit LGC 357? Let
7 me give it to you. First, do you know what
8 casualty actuarial statistical task force means?

9 A. I assume it's an organization of
10 actuaries who probably have their full actuarial
11 certifications, ten certifications.

12 Q. And the term casualty?

13 A. Casualty is just -- it's the casualty
14 side of the property and casualty construct of
15 coverage.

16 Q. Does that relate to healthcare?

17 A. In some insurance companies,
18 healthcare -- where there are multiline companies,
19 healthcare is part of the property and casualty
20 platform, and there are also monoline insurance
21 companies, Aetna, for example, that only write
22 healthcare insurance. CIGNA is a hybrid, an
23 example of a hybrid.

1 Q. So from this title can you tell whether
2 this relates to healthcare RBCs, or nonhealthcare,
3 or both?

4 A. I cannot tell.

5 Q. There is reference -- I believe it's in
6 that second paragraph -- about the trend test.

7 A. Yes, it is.

8 Q. I'm sorry, third paragraph.

9 A. I see it.

10 Q. What is the trend test, do you know?

11 A. RBC is not a science.

12 Q. Is --

13 A. Not a science. It purports to
14 establish from a regulatory point of view that in
15 which regulator intervention of any kind is not
16 necessary. A modification was made in healthcare
17 which --

18 MR. SATURLEY: I object to the
19 nonresponsive question.

20 THE PRESIDING OFFICER: I'm sorry,
21 Mr. Saturley objects.

22 MR. SATURLEY: I object as
23 nonresponsive.

1 THE PRESIDING OFFICER: Could I have
2 the question again, please, Ms. Carle?

3 (Question read.)

4 THE PRESIDING OFFICER: Would you
5 answer that question, Mr. Coutu, yes or no for me,
6 please?

7 THE WITNESS: Do I know the trend test?
8 Yes.

9 THE PRESIDING OFFICER: Mr. Volinsky.

10 BY MR. VOLINSKY:

11 Q. Would you tell us what it means?

12 A. It's a refinement of RBC.

13 Q. How so?

14 A. Their trend test introduces another
15 insurance benchmark very common in the insurance
16 industry called the combined ratio test. The
17 combined ratio test is the sum of a loss ratio and
18 the underwriting ratio, and --

19 Q. What does that mean?

20 A. If I have a combined ratio of 1.0,
21 and -- it means that for what I'm getting paid as a
22 premium in the course of running claims, I'm
23 breaking even. If I have a combined ratio of 1.3,

1 it means I'm losing 30 cents on every dollar
2 premium I charge.

3 Q. And if it's the other way, .7?

4 A. It means I am running my business in a
5 highly efficient, highly effective basis in
6 relation to premiums and charging.

7 Q. Does the trend test mentioned here have
8 an application that you can make in reviewing
9 health trust losses in underwriting?

10 A. It's possible to calculate the combined
11 ratio for the health trusts. The trend test says
12 if the combined ratio is in excess of 105 percent,
13 which translated means they're losing 5 cents for
14 every dollar premium charged, then in that instance
15 200 percent is no longer deemed to be an adequate
16 or minimum level of RBC. The NAIC requirements
17 cause that RBC amount to go from 200 percent to 300
18 percent.

19 Q. In this case, does HealthTrust have the
20 kind of upside down trend that would require the
21 boosting of RBC from 200 to 300?

22 A. Based on the information I could glean
23 from the financial statements, my calculation of

1 the loss in underwriting ratios of LGC HealthTrust
2 suggest that it is below the trigger that would
3 cause the trend test to cause a higher level of RBC
4 to be the minimum.

5 Q. So with -- HealthTrust's loss versus
6 underwriting, we should be talking, in your
7 opinion, about 200 not 300?

8 A. Based on their being below 105, that
9 would be my conclusion.

10 THE PRESIDING OFFICER: Mr. Volinsky,
11 could I interject for a clarification?

12 MR. VOLINSKY: Yes.

13 THE PRESIDING OFFICER: So we may not
14 waste time later. This prior response that you
15 gave in this short exchange here, where you
16 were -- well, to be specific -- could you give me
17 not this last question, but the one just prior to
18 it, please?

19 (Question read.)

20 THE PRESIDING OFFICER: Could you
21 respond to that question again? And it's because
22 I lost you halfway through your answer. So you
23 didn't do anything right or wrong, I lost you.

1 THE WITNESS: Yes, sir. I first of all
2 am interpreting upsidedown to mean that they're
3 incurring cost excess of the one dollar rule.

4 MR. VOLINSKY: Yes.

5 THE WITNESS: So the response to the
6 question, following the mode of the question,
7 they're not upsidedown. That is they're below
8 1.05 combined ratio trend test trigger.

9 THE PRESIDING OFFICER: Thank you.

10 THE WITNESS: Sure.

11 THE PRESIDING OFFICER: Mr. Volinsky.

12 MR. VOLINSKY: If I could have just one
13 second.

14 THE PRESIDING OFFICER: Absolutely.

15 BY MR. VOLINSKY:

16 Q. One further question on Exhibit LGC
17 357. The discussion in this guidance that you've
18 now read today, is there any part of this
19 discussion that you interpret to apply to insurers
20 or risk pools that have specific statutory
21 requirements as in RSA 5-B:5 to return all
22 earnings and surplus excess of operations?

23 MR. SATURLEY: Objection, your Honor.

1 THE PRESIDING OFFICER: Grounds,
2 please, Mr. Saturley.

3 MR. SATURLEY: I believe it calls for a
4 legal conclusion.

5 THE PRESIDING OFFICER: Mr. Volinsky,
6 I'm going to allow that objection. Could you try
7 it a different way?

8 MR. VOLINSKY: Sure.

9 THE PRESIDING OFFICER: Thank you.

10 BY MR. VOLINSKY:

11 Q. In any of 357, does it discuss in any
12 way insurers or risk pools that have legal --
13 whatever the legal requirement is -- to return
14 surplus?

15 A. It does not.

16 Q. Do you know, on the same topic, you
17 mentioned some RBC values for Blue Cross/Blue
18 Shield franchises across the country. Do you know
19 if those enterprises have some statutory
20 requirement of some kind to return excess surplus?

21 A. They do not. I can't speak for the
22 Massachusetts healthcare pool, but in the context
23 of Blue Cross/Blue Shield franchise, no.

1 Q. Let me show you the Milliman report.

2 MR. SATURLEY: Number?

3 MR. VOLINSKY: It's LGC 272.

4 THE PRESIDING OFFICER: Let us catch up
5 with you, please.

6 MR. VOLINSKY: I can tell everyone,
7 it's one quick point, and it may not be worth the
8 effort.

9 THE PRESIDING OFFICER: Well, I'd like
10 to see it in context.

11 MR. VOLINSKY: Okay.

12 THE PRESIDING OFFICER: You've all had
13 your preliminary motions in pieces, and I'd like
14 to see it here in context. LGC 272, I see a
15 letterhead of Milliman, is that correct?

16 MR. VOLINSKY: Yes. With the date
17 March 3, '11.

18 THE PRESIDING OFFICER: That is
19 correct. Fine, I'm with you now.

20 MR. VOLINSKY: If you'll turn to page
21 4.

22 THE PRESIDING OFFICER: Is this the
23 so-called Milliman report that you referred to?

1 MR. VOLINSKY: I believe it is.

2 THE PRESIDING OFFICER: All right,
3 thank you.

4 BY MR. VOLINSKY:

5 Q. Just one quick point.

6 MR. VOLINSKY: Sorry to make everyone
7 search.

8 BY MR. VOLINSKY:

9 Q. If I refer you to the end of the top
10 paragraph on page 4, does that help you recall
11 about whether the Massachusetts study relates to
12 the Massachusetts risk pool, or simply
13 Massachusetts health insurers?

14 A. Upon rereading this particular
15 provision of the Milliman report March 3, '11, it
16 says the Massachusetts Division of Healthcare
17 Finance and Policy had a study performed of
18 Massachusetts health insurers' surpluses. It does
19 not state that it's the Massachusetts risk pool, or
20 that the risk -- or that any risk pools in
21 Massachusetts were included in the study.

22 Q. So understanding that change, let me
23 ask you the same question about the Massachusetts

1 insurers that I asked you about the Blue Cross
2 insurers; that is, do you know if any of those
3 Massachusetts health insurers have some kind of a
4 legal requirement of any nature to return surplus?

5 A. In the -- again, for clarification,
6 that were in the study?

7 Q. Yes.

8 A. Well, I'm assuming in the study, the
9 way it's written that these are not risk pool
10 insurers, and therefore would not be subject to a
11 statutory return of service.

12 MR. VOLINSKY: If I can have one
13 moment.

14 Those are all the questions I have,
15 your Honor.

16 THE PRESIDING OFFICER: Thank you.
17 Mr. Saturley, on recross, and again in accordance
18 with preliminary. Are you going to take him on
19 recross?

20 MR. SATURLEY: I'm just going through
21 my notes to see if it's necessary.

22 THE PRESIDING OFFICER: That's fine. I
23 just want to note to respondents' counsel that

1 according to the preliminary agreement that we
2 will stay within the redirect.

3 Mr. Coutu, you are free to get up and
4 roam, if you'd like.

5 THE WITNESS: I'd like to think, your
6 Honor, that I am at the end of my journey.

7 MR. SATURLEY: Mr. Mitchell.

8 THE PRESIDING OFFICER: Mr. Saturley.

9 MR. SATURLEY: The respondents have
10 determined that we had concluded asking our
11 questions to Mr. Coutu.

12 However, at this point I would like to
13 renew an objection that I made to Mr. Coutu's
14 expert report, and indeed move to strike those
15 portions of it that do not have any relevance to
16 the topics about which he opined here orally, by
17 reason I do not believe it's appropriate for that
18 material to -- I don't believe it's appropriate
19 for that material to go back into, essentially,
20 the record with you after this hearing is over.

21 The petitioner, the bureau, selected
22 what topics it wanted Mr. Coutu to opine about,
23 those are the ones that we responded to as part of

1 our cross-examination, and I think that that
2 should be the extent of it.

3 To the extent that the hearsay rules
4 don't specifically apply here, and so therefore we
5 wish to review his report on those topics. I
6 understand that that's your ruling, but I would
7 move to strike anything else in the report that's
8 on the topic about which he did not orally testify
9 starting yesterday and including today.

10 THE PRESIDING OFFICER: Your objection
11 is denied again. Do you have any questions on
12 recross of this witness?

13 MR. SATURLEY: I do not.

14 THE PRESIDING OFFICER: I will assign
15 appropriate weight on what other content might be
16 in there, which may or may not have been subject
17 to deposition, which may or may not have been
18 considered in your -- in the respondents'
19 cross-examination and an opportunity to recross
20 examination today. And at the great -- oh,
21 Mr. Gordon, please.

22 MR. GORDON: No, I'm sorry.

23 THE PRESIDING OFFICER: No, I'm going

1 to take us on a different track, so, please.

2 MR. GORDON: I would like to join in
3 the objection. And, for the record, since we have
4 not been jumping up trying to clutter the record
5 with objections that --

6 THE PRESIDING OFFICER: Excuse me, you
7 have not been? Could you come forward?

8 MR. GORDON: Trying not. I've been
9 under the best behavior I've been in a while. But
10 that we collectively share our objection, that one
11 objection is the objection taken for the others,
12 unless you would like us to stand up and voice
13 individual objections joining those objections.

14 THE PRESIDING OFFICER: But you'll get
15 you on the record. So on behalf of Ms. Maura
16 Carroll, you are joining in this last objection,
17 correct?

18 MR. GORDON: Yes.

19 THE PRESIDING OFFICER: Okay.
20 Mr. Howard, please? Sorry to give you this
21 exercise, but we'll keep the record clean.

22 MR. HOWARD: Thank you. And allow me
23 to join in objections that have been made so

1 far --

2 THE PRESIDING OFFICER: Well, this
3 objection.

4 MR. HOWARD: This objection, yes. I
5 would also add that it's fundamentally unfair in
6 terms of process to require the respondents, and
7 from my perspective, my client, to respond to
8 opinions made in the written report but not
9 produced here at trial.

10 The bureau has chosen not to elicit
11 those comments at trial. So for me to
12 cross-examine that report, I then have to elicit
13 that opinion. The bureau has chosen not to admit
14 the opinions. I should not be in the position of
15 having to elicit them so that I can then challenge
16 them. That is a fundamentally unfair process, and
17 I object to those portions of the report that were
18 not elicited here at trial. Thank you.

19 THE PRESIDING OFFICER: Rebuttal,
20 Mr. Volinsky, do you feel the need?

21 MR. VOLINSKY: No, sir, I would just
22 adopt my earlier comments.

23 THE PRESIDING OFFICER: Thank you.

1 Okay. I don't think I have to deny again. I
2 appreciate comments of those joining in the
3 objection.

4 Now, do I understand that you're about
5 to excuse this witness -- or I'm about to excuse
6 this witness? No one has anything further of him?

7 Okay. At great risk, I have a
8 question, Mr. Coutu. And all I can say is in my
9 experience as a hearing officer, and other roles
10 as a neutral, just by me doing this may garner
11 undue attention, but it, for me, is one that it's
12 closer to clarification than opening anything new.

13 If it does, unfortunately I have
14 created my own beast, and we'll start -- well, not
15 anew, but we'll give you opportunity.

16 During your testimony, sir, you spoke
17 of repricing on several occasions. Do you recall
18 that testimony?

19 THE WITNESS: I do.

20 THE PRESIDING OFFICER: Is it your
21 experience that repricing of a product -- may I
22 call it a product? Policy?

23 THE WITNESS: Policy or product covers

1 or works.

2 THE PRESIDING OFFICER: Very good.
3 That that repricing to re -- to gather capital can
4 be priced over the course of more than one year?

5 THE WITNESS: Each insurance company
6 can decide how much, if there's a capital loss, to
7 recover in a singular year or multiple years.

8 THE PRESIDING OFFICER: Do you know if
9 the contracts that LGC may have with the medical
10 insurance company, if they allow multiyear
11 repricing?

12 THE WITNESS: First, to be very clear,
13 because I don't want to be confusing anybody. You
14 cannot reprice a GMR quote.

15 THE PRESIDING OFFICER: Understood.

16 THE WITNESS: That's locked in stone.
17 So when I'm talking about repricing, I'm talking
18 as respects new underwriting years in respect to
19 new insureds who are not covered or subject to the
20 GMR, No. 1.

21 No. 2 is -- I think you said does the
22 claim service allow -- maybe I misunderstood you
23 on that.

1 THE PRESIDING OFFICER: Whoever LGC is
2 contracting with. You said some companies do
3 allow multiyear repricing and some do not. Does
4 the medical insurance provider to LGC, if you
5 know, allow for multiyear repricing or not?

6 THE WITNESS: For the sake of making
7 this a bit more complicated, there is,
8 unfortunately, in the business multiyear
9 contracts.

10 THE PRESIDING OFFICER: Yes.

11 THE WITNESS: Which work like GMRs.

12 THE PRESIDING OFFICER: Yes.

13 THE WITNESS: I do not believe that
14 HealthTrust offers multiyear contracts.
15 Therefore, with the exception of GMR pricing, it
16 would have the opportunity to reprice, meaning a
17 new premium for each new underwriting year.

18 THE PRESIDING OFFICER: Thank you very
19 much. Does anyone feel a need to follow up on
20 that at all?

21 Thank you. I'm at least better
22 educated for that response, Mr. Coutu. You are
23 excused. Thank you for your participation.

1 THE WITNESS: Thank you.

2 THE PRESIDING OFFICER: Mr. Volinsky,
3 is my understanding that counsel were going to
4 talk at lunchtime with respect to the order of
5 witnesses and how you wish to proceed from here?
6 It is your case, so I'll ask -- recognize you to
7 make the representation on behalf of all.

8 MR. VOLINSKY: I believe we are in the
9 same position we were when we met before the
10 break, which is Mr. Mr. Andrews is the next
11 witness. I don't understand that he's here or
12 available, so if we may start with him first thing
13 in the morning, that would be helpful.

14 THE PRESIDING OFFICER: Okay, and that
15 was by previous agreement. I just wanted to get
16 it on the record.

17 MR. VOLINSKY: Yes, sir.

18 THE PRESIDING OFFICER: Thank you very
19 much. If I could recognize LGC, there was also
20 discussion with respect that there will be some
21 work on exhibits over the course of either this
22 evening or another evening so that tomorrow
23 morning we might start off with getting some batch

1 admissions. Is that correct? Mr. Quirk?

2 MR. QUIRK: Yes, that's correct. We
3 are going to look at this this evening and confer
4 with the BSR on the exhibits.

5 THE PRESIDING OFFICER: And while I
6 have you trapped and standing, can I also ask,
7 there was another issue that went to
8 Mr. Saturley's several, but identical, as I
9 understood them, objections.

10 With respect to the possibility of
11 there being different numbers that were relied
12 upon by Mr. Coutu, and that there might be some
13 discrepancy, it is my understanding that you're
14 going to also work on those?

15 MR. QUIRK: It's my understanding that
16 several charts that Mr. Coutu used during his
17 direct and I believe cross-examination, those
18 numbers had inaccuracies in them in certain
19 aspects.

20 We're still looking at those charts
21 because there's a number of documents in there,
22 and we're going to continue that analysis, if you
23 will, and we will update the bureau as to what we

1 find.

2 THE PRESIDING OFFICER: Okay, fine.
3 Thank you very much, Mr. Quirk. I think one other
4 housekeeping, and maybe this was settled, but
5 there was some question during testimony as to
6 whether everything had been produced, if you
7 recall?

8 MR. VOLINSKY: Yes.

9 THE PRESIDING OFFICER: And there was
10 going to be some work tonight to determine whether
11 or not that was produced by BSR.

12 MR. VOLINSKY: Yes, sir.

13 THE PRESIDING OFFICER: Very good,
14 thank you. Again, thank you for your patience,
15 your attention, and we'll see you, then, tomorrow
16 at 9 a.m. to continue.

17 (Whereupon at 2:55 p.m. the
18 proceedings were recessed,
19 to reconvene on Wednesday,
20 May 2, at 9:00 a.m.)

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22

23

1 C E R T I F I C A T E

2 I, Pamela J. Carle, Licensed Shorthand Reporter,
3 Registered Professional Reporter, and Certified
4 Realtime Reporter, do hereby certify that I reported
5 in machine shorthand the proceedings had at the
6 taking of the above-entitled hearing, held on the 1st
7 day of May 2012, and that the foregoing is a true,
8 complete, and accurate transcript of said proceedings
9 as appears from my stenographic notes so taken to the
10 best of my ability, and transcribed under my personal
11 direction.

12 I further certify that I am a disinterested person
13 in the event or outcome of this cause of action.

14 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES
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17 DIRECTION OF THE CERTIFYING COURT REPORTER.

18 IN WITNESS WHEREOF, I subscribe my hand and affix
19 my Certified Shorthand Reporter seal this 13th day of
20 May, 2012.

21

22

23

PAMELA J. CARLE, LCR, RPR, CRR